MFIA MEDIA FREEDOM & INFORMATION ACCESS CLINIC
ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION
Yale Law School

February 6, 2026

Written Testimony in Support of H. 572,
An Act Relating to Permitting Public Access to Electronic Criminal Case Records

Dear Chair LaLonde and Members of the Committee:

Thank you for the opportunity to testify before the Committee on February 3, 2025, in favor of House Bill 572. Per the Committee's request, I write to submit this supplemental, written testimony to further explain why the bill is not only good policy, but mandated by the federal constitution.

Background

I am a third-year student at Yale Law School and a Student Director of the Media Freedom and Information Access Clinic. The clinic focuses on increasing government transparency, defending the work of newsgatherers, and protecting freedom of expression through impact litigation, direct legal services, and policy work. Last year, we were retained by the New England First Amendment Coalition to explore solutions to the lack of meaningful access to criminal court records in Vermont. This work included legislative history research on the origins of the current public access law and legal research on its constitutional implications.

Currently, Vermont law prohibits "public access via the internet to criminal . . . case records."[1] The state's access prohibitions in 12 V.S.A. § 5 and its implementing regulations (the "Access Restrictions") derive from a state law enacted in 2008 at the dawn of the internet, when court records were uniformly filed in paper form. This scheme makes it nearly impossible for journalists and members of the public to follow criminal prosecutions and to monitor the functioning of the criminal courts. Further, this scheme places impermissible burdens on the right of access to criminal court records secured by the Federal Constitution, the Vermont Constitution, and historically rooted common law.

I. The rationales that motivated the legislature to restrict access to these records in the first place no longer apply.

As part of our research, our team did a deep dive into the legislative history of these restrictions, listening to committee hearings and examining the report that investigated potential options. The legislators settled on the current restrictions for two reasons, both of which are obsolete today.

First, legislators were concerned that dockets placed online could contain errors because the records were filed in paper form, and electronically available dockets were being generated by

[1] 12 V.S.A. § 5(a).

P.O. BOX 208215, NEW HAVEN, CONNECTICUT 06520-8215 • FACSIMILE 203 432-3034
COURIER ADDRESS 127 WALL STREET, NEW HAVEN, CT 06511

court clerks transcribing paper files by hand. Second, legislators at the time contended that the restrictions were necessary to protect litigants' privacy interests, including concerns about online access to personally identifiable information such as social security numbers.[2]

Legislators' concerns about transcribing errors have been resolved by technological developments over the past two decades. All court documents must now be filed electronically in digital form,[3] rendering obsolete the concern about inaccurate transcriptions. Nor does any efficiency interest justify the current restrictions, since these filings are electronic in their native form and already available remotely to users with heightened access. In fact, it is now more efficient for the public to be able to access these records online directly, because in-person access requires court staff to manage a separate bureaucratic process.

Similarly, privacy no longer provides any proper basis for curtailing the constitutional right of access to criminal court records. Court rules now require attorneys to remove personal information such as social security and bank information from public filings.[4] And criminal defendants have no protectible privacy interest in the records of their publicly conducted prosecutions. As the Supreme Court has recognized, "our criminal law tradition insists on a public criminal process."[5] These judicial records are public by definition; indeed, members of the press and public are permitted to inspect and copy the records by visiting a courthouse terminal.

Further, the necessity of Vermont's severe restrictions was questionable even at the time they were enacted. The current restrictions go well beyond the recommendations made in 2007 by the committee the legislature created to study the issue. That committee recommended "providing public access to the Judiciary's electronic criminal case records through VtCourtsOnline" with several requirements to protect *legitimate* privacy interests.[6] These less restrictive means would have included ensuring that "records . . . currently not open to the public by law or court rule" such as those subject to sealing orders would not be available, along with a prohibition on access to social security numbers and names of victims.[7] The state can also guard against mass data harvesting through significantly less restrictive means, such as requiring users to have accounts—

---

[2] *See Electronic Access to Criminal and Family Court Records: Hearing on S. 246 Before the S. Judiciary Comm.*, 2007-2008 Leg. (Vt. Jan. 11, 2008) (audio recording, pt. 2, at 10:03-14:16); *Electronic Access to Criminal and Family Court Records: Hearing on S. 246 Before the S. Judiciary Comm.*, 2007-2008 Leg. (Vt. Jan. 11, 2008) (audio recording, pt. 3, at 30:09-31:31).

[3] *See* Vt. R. Elec. Filing 3(a). The Vermont rules exempt certain classes, including self-represented litigants and guardians ad litem, from this this requirement. Vt. R. Elec. Filing 3(b), (d).

[4] *See* Vt. R. Pub. Access to Ct. Recs. 6(b)(14), 7(a)(1); Vt. R. Elec. Filing 5(b).

[5] *Smith v. Doe*, 538 U.S. 84, 99 (2003) ("[O]ur criminal law tradition insists on public indictment, public trial, and public imposition of sentence. Transparency is essential to maintaining public respect for the criminal justice system, ensuring its integrity, and protecting the rights of the accused."); *see also Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980) ("[C]riminal trials both here and in England ha[ve] long been presumptively open. . . .").

[6] VT. ACCESS TO CRIM. HIST. REC. INFO. COMM., REP. TO H. & S. COMMS. ON JUDICIARY 16-20 (2007).

[7] *Id.* at 16-17, 20.

another restriction recommended in the 2007 Report.[8] But instead, the Legislature adopted the current, much more restrictive statute, which members of the Senate Judiciary Committee themselves acknowledged would impede constitutionally protected public access to judicial records.[9] Today's Legislature should not permit those mistakes to be carried forward.

II. The Access Restrictions violate rights of access to criminal court records secured by the Federal Constitution, the Vermont Constitution, and common law.

For decades, federal courts have made clear that the First Amendment guarantees the public and the press a qualified right of access to judicial records.[10] This right applies with particular force to documents from criminal proceedings, where the public and press's interest in real-time oversight is at its peak, and where criminal defendants, once charged, possess significantly diminished privacy interests in the unsealed records of their cases.[11] The Access Restrictions impermissibly burden this right of access, and violate several other longstanding constitutional and common law principles.

The First Amendment access right prohibits the denial of access to judicial records unless strict constitutional standards have been met,[12] and it also prohibits the imposition of burdens that meaningfully impede the public and press's ability to obtain judicial records.[13] Unconstitutional impediments can include imposing delays, restrictions, or procedural hurdles that prevent timely or effective access to such records. The Second Circuit affirmed this rule just last year in

---

[8] VT. ACCESS TO CRIM. HIST. REC. INFO. COMM., REP. TO H. & S. COMMS. ON JUDICIARY 18 (2007) (attached).

[9] *Electronic Records: Hearing on S. 246 Before the S. Judiciary Comm.*, 2007-2008 Leg. (Vt. Feb. 5, 2008) (audio recording at 44:43-45:09) ("I mean we're trying to make it so if you really want this, you gotta work for it. . . . I have to keep reminding myself that it is currently public record. It's just the ease at which you are getting that record.").

[10] *See, e.g.*, *Courthouse News Serv. v. Corsones*, 131 F.4th 59, 67 (2d Cir. 2025) (First Amendment right of immediate access to newly filed complaints); *Lugosch v. Pyramid Co. of Onondaga,* 435 F.3d 110, 121 (2d Cir. 2006) (First Amendment and common law right of access to summary judgment documents); *Hartford Courant Co. v. Pellegrino,* 380 F.3d 83, 92-96 (2d Cir. 2004) (First Amendment right of access to docket sheets); *In re New York Times*, 828 F.2d 110, 114 (2d Cir. 1987) (First Amendment right of access to "written documents submitted in connection with judicial proceedings that themselves implicate the right of access").

[11] *See Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 575 (1980) ("Plainly it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted . . . ."); *United States v. Greenwood*, 145 F.4th 248, 255-56 (2d Cir. 2025) (same); *Pellegrino*, 380 F.3d at 91 ("[T]his right applies to civil as well as criminal proceedings.").

[12] *See, e.g., Press-Enterprise Co. v. Super. Ct.*, 464 U.S. 501, 510 (1984) (*Press-Enterprise I*) (requiring party seeking to restrict access to establish a compelling need for secrecy and demonstrate that alternatives to closing the record are inadequate); *Press- Enterprise Co. v. Super. Ct.*, 478 U.S. 1, 13-14 (1986) (*Press-Enterprise II)*; *United States v. Doe,* 63 F.3d 121, 128 (2d Cir. 1995).

[13] *See Corsones*, 131 F.4th at 67 ("Determination whether the presumptive right of access matures into an actual right of access depends on whether the party imposing delays succeeds in showing justification," which must be based on "specific, on the record findings"); *see also Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565-66 (2011) (explaining that the "distinction between laws burdening and laws banning speech is but a matter of degree").

Courthouse News Service v. Corsones.[14] There, a Vermont system that reviewed newly-filed complaints for confidential material, filing requirements, and errors before releasing them to the public had led to lengthy delays in access for journalists.[15] Recognizing that Second Circuit and Supreme Court precedent had already established a right of access to complaints at the time of filing, the court determined that "delays in granting the public access" to these complaints were not "persuasively justified by the party causing the delay."[16] The court explained that Vermont's review process was not "narrowly tailored" to their interest in protecting the release of confidential information because the process was lengthened by the review for errors or other filing requirements.[17]

The court's in-depth examination of the reasons for delay in *Corsones* is the same test that would be applied to the Access Restrictions here, since the access right "attaches upon a court's receipt of a filing" for all judicial records.[18] To justify a restriction, the government must demonstrate a compelling interest and show that the restriction is narrowly tailored to achieve that interest.[19] Here, no such compelling interest exists—as overviewed above, Vermont's potential concerns about privacy and efficiency are either outdated or illegitimate, and far less restrictive means are readily available. Because the Access Restrictions are neither essential to preserving any higher value nor narrowly tailored, they fail strict scrutiny and are thus unconstitutional.[20]

Beyond the federal question, the Access Restrictions also violate Vermont's own constitution. The public access statute improperly reserves a government benefit—access to court records—for only a part of the community—certain government agencies, attorneys, and litigants, in violation of Vermont's Common Benefits Clause.[21] The benefit at stake is deeply significant. Without meaningful access to judicial records, the press and public are kept in the dark about criminal proceedings and unable to participate in public oversight vital to a functioning democracy. And this restriction does not promote the law's stated goals or bear a reasonable or just relation to those goals: privacy interests, as explained above, cannot sustain this law.

---

[14] *Corsones*, 131 F.4th at 67.

[15] *Id.* at 64-65.

[16] *Id.* at 66.

[17] *Id.* at 68-72.

[18] *Id.* at 66.

[19] *Press-Enterprise Co. I.*, 464 U.S. at 510 (holding that denial of access is permissible only when "essential to preserve higher values").

[20] *See id.* at 8-9, 13-14.

[21] VT. CONST. ch. I, art. 7 ("[G]overnment is, or ought to be, instituted for the common benefit . . . of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community . . . .").

III. The Fourth Circuit's recent decision does not alter the constitutional analysis.

The Fourth Circuit's decision in *Courthouse News Service v. Smith*[22] does not change the constitutional analysis. *Smith* concerned an online access scheme for civil case records in Virginia superficially similar to the Access Restrictions here, but key differences distinguish that case.

As a threshold matter, the facts of *Smith* are different in a material way from the facts of Vermont's access limitations. The Virginia scheme already provides public access to case dockets online.[23] Vermont's Access Restrictions prohibit this access for criminal records,[24] in violation of clear Second Circuit precedent.[25] Further, the Virginia scheme is partially manual: court clerks individually scan filings before uploading them to the online system, whereas in Vermont, digital filings are already online. This difference means that both attorneys and the public in Virginia can view filings only after this clerk's step is completed, whereas in Vermont, attorneys have access to these filings nearly automatically, whereas the public must wait until a courthouse opens.

Separately, the legal standard applied in *Smith* is not the standard used by the Second Circuit or the Supreme Court. *Smith* appropriately recognized a right of access to judicial records, but it chose not to apply the narrow tailoring analysis dictated by the Supreme Court in *Press Enterprise II*[26] and instead applied a more relaxed standard appropriate to a "time, place, and manner" restriction.[27] The Second Circuit in *Corsones* refused to substitute this "time, place, and manner" test for the narrow tailoring analysis the Supreme Court requires for any limitation of the First Amendment access right.[28] There is no reason to believe it would treat the Access Restrictions here any differently. And even if the "time, place, and manner" test were applied, Vermont's Access Restrictions would likely fail for reasons set forth in *Corsones*. There, the Second Circuit emphasized the importance of time to reporting on the courts, stressing that "news is a perishable commodity," so a regulation that meaningfully delays access to records could not be considered "largely immaterial to the exercise of the right."[29]

By denying timely and meaningful access to judicial documents that are unquestionably public, the Access Restrictions suppress the ability of citizens, journalists, advocates, and researchers to

---

[22] 126 F.4th 899 (4th Cir. 2025), *reh'g denied*, No. 22-2110, 2025 WL 1218982 (4th Cir. 2025).

[23] *Id.* at 407.

[24] *See Vermont Judiciary Public Portal,* https://portal.vtcourts.gov/Portal ("Anonymous public users and members of the general public can view case summaries [akin to docket sheets] for Civil Division and Judicial Bureau cases remotely. Document viewing and access to all other public case types (criminal, family, probate and others) is available to the general public only at courthouse public access terminals.").

[25] *See Hartford Courant Co. v. Pellegrino,* 380 F.3d 83, 93 (2d Cir. 2004) ("[T]he ability of the public and press to attend civil and criminal cases would be merely theoretical if the information provided by docket sheets were inaccessible.").

[26] 478 U.S. at 13-14.

[27] 126 F.4th at 907-08 (citing *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 328 (4th Cir. 2021)).

[28] *Courthouse News Serv. v. Corsones*, 131 F.4th 59, 73-74 (2d Cir. 2025).

[29] *Id.* at 73.

monitor the administration of criminal justice.[30] This is precisely the harm the First Amendment forbids.[31]

***

The Supreme Court has long recognized that the openness of judicial proceedings is "an indispensable attribute of an Anglo-American trial."[32] Through transparency, "[n]ot only is respect for the law increased and intelligent acquaintance acquired with the methods of government, but a strong confidence in judicial remedies is secured which could never be inspired by a system of secrecy."[33]

When access to court records is severely burdened, confidence in the judicial process is lost, as the press cannot timely report or must forego reporting altogether. This is the case in Vermont, where journalists must spend hours at the courthouse, battling bureaucracy and technology to use terminals that are limited in number and often out of service, seeking assistance from busy clerks to log in, print hard copies, or even take individual pictures of each page with their phones. For newsgatherers, timeliness of reporting is crucial, and this delay is often tantamount to an outright denial of access. After all, "what exists of the right of access if it extends only to those who can squeeze through the door?"[34]

H. 572 brings Vermont into compliance with longstanding democratic principles and remedies the constitutional and common law violation. I urge that the Committee pass this bill.

Anna Selbrede
Student Director, Media Freedom & Information Access Clinic
Yale Law School ('26)

[30] *See Weaver v. Massachusetts*, 582 U.S. 286, 298-99 (2017) ("[T]he right to an open courtroom protects the rights of the public at large, and the press, as well as the rights of the accused.).

[31] It should also be noted that the Fourth Circuit in *Smith* expressly reserved the question of whether there is a "freestanding First Amendment right of online access to judicial records," which remains an open issue. 126 F.4th at 907.

[32] *Richmond Newspapers*, 448 U.S. at 569.

[33] *Id.* at 572.

[34] *Hartford Courant Co. v. Pellegrino,* 380 F.3d 83, 93 (2d Cir. 2004) (quoting *United States v. Antar*, 38 F.3d 1348, 1360 (3d Cir. 1994)).