

Federal judge slams Vermont judiciary, sides with media over access to court filings



U.S. District Court Judge Christina Reiss in Essex on Oct. 15.

A federal judge has sided with several media outlets in Vermont and First Amendment advocacy groups, ordering the state's court system to do away with delays when it comes to providing public access to newly filed lawsuits.

Federal Judge Christina Reiss, in a 32-page ruling granting an injunction to prevent the Vermont judiciary from continuing the delays, blasted the practice that blocked access to the filed documents until court staff had a chance to review them.

Timely access to documents, the judge wrote in the decision, allows the public to understand the activity of the court system, increases

accountability and keeps people informed of matters of public concern.

"Defendants' pre-access review thwarts these objectives in an inconsistent, unpredictable and unjustifiable manner," Reiss wrote. "Defendants have violated the public's and plaintiffs' First Amendment right of access to newly filed complaints."

A hearing on the issue was held in late October. The [legal action was brought in May](#) by the lead plaintiff, Courthouse News Service, a Pasadena, California-based organization. Joining Courthouse News in the legal action were the Vermont Press Association and the New England First Amendment Coalition, as well as the parent entities of VTDigger.org, Seven Days, the Burlington Free Press and WCAX-TV.

Charity Clark, chief of staff to Vermont Attorney General TJ Donovan, referred specific comment on the ruling to the Vermont judiciary. Clark did state in an email Wednesday, "We are reviewing the court's opinion and order. A decision concerning an appeal will be made in consultation with our client, the judiciary."

Scott Griffith, chief of planning and court services for the Vermont court administrator's office, replied to a request for comment with an email that did not directly respond to the question of whether an appeal was anticipated.

"We just received the opinion and order and are in the process of reviewing it in the context of judiciary operations," Griffith said.

Bill Girdner, editor of Courthouse News Service, hailed the ruling as a victory for the First Amendment.

"The judge understood the facts. She understood the law. She made an excellent First Amendment analysis of the facts and the law," Girdner said Wednesday. "The result is an outstanding opinion."

Girdner said he was unsure if the Vermont judiciary would appeal the ruling.

"It's their call," Girdner said. "We've been given no indication either way."

Also Wednesday, a court filing stated that the parties that sought the injunction will pursue attorney fees from the Vermont judiciary to cover the costs of bringing the action.

Girdner said he was not sure how much money that involves.

[At the hearing in the case last month](#), both sides agreed that the documents should be publicly available. At issue was the question of when.

Assistant Attorney General David Boyd, representing Vermont's judiciary, contended that court staff members needed time to screen the documents for any confidential material before releasing them.

Attorney William Hibsher, arguing for the news outlets, told the judge the records should be publicly available "contemporaneous" to their filing.

It can take a day or longer for the court to review newly filed complaints, and news value diminishes with every passing day, said Hibsher, an attorney with Bryan Cave Leighton Paisner LLP in New York City.

Michael Donoghue, executive director of the Vermont Press Association, said this week that the organization was pleased with the "well-crafted" decision by Reiss.

Donoghue said the delay in obtaining court filings has long been a frustrating issue for the press association and its members, as sometimes the court review process took days.

For instance, he said, sometimes a party will hold a press conference outside the courthouse announcing that a lawsuit's been filed, but inside the building, the court staff won't release a copy of it because a review of the

documents had not been completed.

“This has been an issue for some time,” Donoghue said. “It was just a fight that we didn’t take all the way down the goal line. Courthouse News expressed interest in taking the lead on this, and they had the lawyers.”

“We were willing to join, and we did,” Donoghue said.

Reiss noted in the ruling that the news organizations argued the Vermont judiciary was an outlier among states in its practices.

“Plaintiffs contend that as of July 1, 2021,” the judge wrote, “Vermont was the only state in the nation that requires court clerks to independently review electronic court filings in a nonpublic queue for confidential information before those filings are accessible to the public.”

“Defendants offered no evidence to rebut that contention,” Reiss said.

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