

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

COURTHOUSE NEWS SERVICE,)	
)	
Plaintiff,)	
v.)	
)	
VELVA L. PRICE, in her official)	
capacity as Travis County District Clerk;)	
MEGAN LAVOIE, in her official)	
capacity as Administrative Director of)	
the Texas Office of Court)	
Administration,)	
)	
Defendants.)	
)	

Civil Action No. 20-1260

**DECLARATION OF WILLIAM GIRDNER IN SUPPORT OF
PLAINTIFF COURTHOUSE NEWS SERVICE'S
MOTION FOR PRELIMINARY INJUNCTION**

I, William Girdner, declare and state as follows:

I am the editor and publisher of Courthouse News Service (“Courthouse News”), the plaintiff in the above-captioned action. I make this declaration in support of Courthouse News’ *Motion for Preliminary Injunction*. I have personal knowledge of the following facts and would and could testify to them if called as a witness.

Introduction

1. Courthouse News reports on a full set of news topics, from the recent nomination of a new justice for the U.S. Supreme Court, to the discovery of millions of new galaxies in a new map of the universe, to a new Alzheimer’s drug, in addition to the usual fare of fires, floods and elections. But in particular, our news service focuses on the law as it is developed and decided in American courthouses.

2. As editor of Courthouse News, I have final responsibility for the timeliness and content of our news publications. As publisher, I have final responsibility for the business operation of Courthouse News, including distribution of our new litigation newsletters, hiring and supervision of reporters and editors, technological reform of our news service, business decisions that keep Courthouse News afloat, and the decision to challenge clerks who block access to new complaints or petitions.

3. I have developed extensive personal knowledge of the procedures that courts use, both now and in the past, to intake, docket, and provide access to new petitions and complaints. This personal knowledge has been derived from my more than 30 years of covering the courts, including my own in-person visits to many state and federal courts, discussions with court officials, and my eyeball observation of the new filings intake and access procedures. It also derives from my supervision of our reporters and editors around the country, and from seeking, through negotiation and litigation, to take back the traditional access that is being taken away by clerks in the thrall of a new technology.

Courthouse News Publications and Subscribers

4. I founded Courthouse News in 1990, driven by a belief that a great deal of news about civil litigation went unreported by traditional news media, a trend that has only increased in the last decade. Today, Courthouse News employs approximately 240 people, most of them editors and reporters, covering the state and federal trial and appellate courts in all 50 states in the United States.

5. One category of reports that Courthouse News publishes is its nightly newsletters on new litigation, which are regionally based and contain original, staff-written summaries of significant new civil complaints or petitions. Those newsletters focus on general jurisdiction civil

complaints or petitions against business, government entities and individuals who are in the public eye. In Texas, Courthouse News publishes nine regional newsletters. The nightly newsletters do not cover family law matters, name changes, probate filings, collection actions and individual mortgage foreclosures. Courthouse News also does not review or report on the small percentage of complaints or petitions that are not public.

6. In Texas, the nightly newsletters are subscribed to by a number of media entities. Seven stations in Texas subscribe to Courthouse News publications, including KTRK-TV (Houston), KEYE-TV (Austin), KVUE-TV (Austin), KXAN News (Austin), WFAA-TV (Dallas), NBC5 (Dallas/Ft. Worth), KTVT 11 (Fort Worth). Three major Texas newspapers also subscribe, including *The American-Statesman*, *Dallas Morning News*, and *San Antonio Express News*. In addition, the State Bar of Texas subscribes, as well as the Dallas City Attorney. Texas-based corporate subscribers include Hunt Oil Co., Atmos Energy, Energy Transfer, Amegy Bank of Texas, and the Austin headquarters of Whole Foods.

7. Among other Courthouse News publications is the *Daily Brief*, which covers published appellate rulings from the U.S. Supreme Court, federal circuit courts, state appellate courts and significant rulings from the federal district courts, including those in Texas.

8. Nationwide, Courthouse News has about 2,300 subscribers, a group made up of law firms, media, law schools, libraries, nonprofits, government entities, and businesses. In addition to the Texas media noted above, subscribing news outlets around the U.S. include: The Associated Press, *The Atlanta Journal Constitution*, *The Boston Globe*, BuzzFeed, CNN, *Detroit Free Press*, International Consortium of Investigative Journalists, Fox Entertainment Group, *Honolulu Civil Beat*, *Las Vegas Review Journal*, *Los Angeles Business Journal*, *Los Angeles Times*, North Jersey Media Group, *Pacific Coast Business Times*, *Portland Business Journal*, *St. Paul Business*

Journal, The Salt Lake Tribune, The San Jose Mercury News, Tampa Bay Business Journal, Twitter, The Wall Street Journal, Variety, Walt Disney Company and Warner Bros. Among academic institutions, subscribers include Boston College Law School, Boston University, Case Western Reserve University, Harvard Law School, Loyola Law School, MIT Sloan School of Management, Southern Illinois University School of Law, UC Hastings College of Law, and UCLA School of Law. A majority of the nation's large and mid-sized law firms also subscribe to one or more of Courthouse News' publications.

9. Courthouse News also publishes a public website at courthousenews.com that features general news and commentary with a focus on court reporting. The news page is read by roughly 30,000 people on daily average. It works much like a daily print newspaper, featuring staff-written articles from across the nation posted during the day and rotated off the page on a 24-hour news cycle.

10. Courthouse News has been credited as the original source of reporting by a range of publications, including: *The Mercury News, ABA Journal, ABC News, The Atlantic, Austin American Statesman, Black Christian News Network, California Bar Journal, CBS News, The Christian Science Monitor, The Daily Beast, The Dallas Morning News, Forbes, Fox News, The Guardian, The Hill, Houston Chronicle, The Huffington Post, Long Island Press, Los Angeles Times, Mother Jones, National Public Radio (NPR); NBC News, New York Daily News, New York Magazine, The New York Times, The Orange County Register, Politico, Rolling Stone, Salt Lake City Tribune, San Antonio Express-News, Slate, The Telegraph (UK), The Wall Street Journal, The Washington Post, The Washington Times, Women's Health Policy Report, United Press International (UPI), USA Today, U.S. News and World Report* and the YouTube news channel.

American, Canadian, and New Zealand radio shows have also interviewed Courthouse News reporters.

11. In the Austin area, Courthouse News publishes the Austin Report, which covers on a daily basis new litigation in Travis County District Court and in the Austin division of the U.S. District Court for the Western District of Texas. The Austin Report is popular, with 129 subscribing law firms and news outlets, including the Austin American-Statesman, KEYE-TV, KVUE-TV and KXAN News. The reporter for that newsletter is Ryan Kocian, who is based in Austin and also covers news stories throughout the state. His bureau chief is Madison Venza, who is also based in Austin and on occasion steps in and writes the nightly Austin Report.

The Importance of Timely Access

12. The timeliness of our newsletters is a fundamental part of their value to subscribers and to readers of our website. News runs on a daily cycle where events occur during the day and are reported that afternoon and evening. Newsmakers and reporters then sleep, and the whole cycle starts all over again the next day. Especially in today's digital age, where news is delayed until the next day or longer, it is devalued by the delay. A day late is generally too late because the news in a day-old complaint or petition has already been overtaken by events in the current news cycle.

13. Civil actions not reported when they are received by a court are thus effectively suppressed, less likely to prompt news coverage, and thus less likely to come to the public's attention as the days pass. I compare news to bread, fresh on the day it is made, stale the next. So did U.S. District Court Judge Henry Coke Morgan, on the fourth day of a bench trial in *Courthouse News Service v. Schaefer*, a case discussed in the accompanying memorandum. A true and correct copy of the relevant excerpt of the trial transcript is attached as **Exhibit 1**.

14. To prepare our new litigation newsletters and identify new cases that may warrant an article on Courthouse News' website, Courthouse News' reporters visit their assigned court, or visit the court's website where remote online access to documents is available. They review all the general jurisdiction civil petitions or complaints or petitions filed with the court that day and determine which are of interest to Courthouse News readers. The newsletters are sent to subscribers in the late afternoon of every court day. Given the fast-moving nature of news, any delay in the ability of a reporter to review new filings necessarily holds up the reporting on those actions for the newsletters and the Courthouse News website.

Traditional Press Access in State and Federal Courts

15. New civil complaints or petitions are an age-old part of the news cycle. While many new civil cases are routine matters, cases are regularly filed that reveal matters important to the public, touching on the environment, elections, dangerous products, schools, discrimination and disasters. They also include the slice-of-life stories that appeal to all readers.

16. Traditionally, with paper complaints or petitions, there were two steps that accompanied a new filing. New civil complaints or petitions were first delivered across the counter to an intake clerk, which is when they were filed. The next day they were picked up and docketed by an intake clerk, who also put them in jackets and sent them off to the records room.

17. The press traditionally reviewed the new civil complaints or petitions after the intake clerk received them at the counter, before they were docketed. That allowed the press to see new civil complaints or petitions when they were filed – rather than after they were docketed or “processed,” as the work is called today. At many state and federal courts across the country, reporters were allowed to go behind the counter to do that reporting. As a result of that tradition, there was no delay between the time when a new complaint or petition was filed and when it could

be reviewed by the press. There was no blackout period during which reporters were required to wait for the docketing process, which regularly took a day or two and sometimes more, to be completed. A delay of even a single day means that news is delayed by at least one full news cycle. Especially in today's digital age, the newsworthiness of new civil actions deteriorates quickly with time. Civil actions not reported when they are received by a court are effectively suppressed, less likely to prompt news coverage, and thus less likely to come to the public's attention as the days pass.

18. In current times, the same two steps are reflected in the e-filing programs used by courts. The filing software now does the work of the former intake clerk at the counter, vetting the new filings for technical requirements and also requiring the filer to run through a precise and extended sequence of choices, plus pay filing fees, in order to submit a new filing. After the filer submits the filing and the court receives it, a human clerk then processes the new e-filing into the docket much as the docketing clerks docketed the new paper filings in the past.

19. When the federal courts converted to e-filing through the federal PACER system, they kept the paper tradition in place by giving access to the press and public on receipt – before the clerical work of processing was completed. That allowed the press to see new complaints when they were e-filed and report on the newsworthy complaints in time for their evening deadline, just as they did with paper. Like the federal courts, a good number of state courts also set up their e-filing systems so that new public filings flow automatically into public view when they are received. They do not impose a blackout during the processing of the new filings. Confirming the automated nature of the intake process, these courts give on-receipt access to new civil complaints even when they are filed after hours or on weekends.

20. As state courts have made the transition to electronic records and, more recently, required e-filing, they have not always been mindful of how these changes impact the ability of the press to cover the courts. While many courts work cooperatively with the press to address and resolve access delays when they arise, some have not. Courthouse News has therefore been forced to bring a number of lawsuits against other courts to assert its First Amendment rights. These lawsuits are typically against state courts clerks and administrators, such as Defendants, who, in the transition to e-filing, took away traditional access and replaced it with a blackout period as part of a policy often called “no-access-before-process.” That policy blocks access to the just-filed complaints or petitions until after they are processed, a set of tasks that has no time limit. Delays that impede news coverage inevitably result when new complaints or petitions sit in a processing queue while journalists wait for the completion of clerical work that ebbs and flows in its efficiency depending on sickness, staffing, training, holidays and even parades. The no-access-before-process policy enforced by Defendants, and the delays that result, is the subject of this lawsuit.

21. The illogic in the policy is that delay can easily be avoided. Many state and federal clerks use e-filing software that does not withhold access for processing. And some of them use the same e-filing software as Defendants. The “process-first” clerks, including Defendants, could easily have their e-filing systems configured to allow access to new petitions when they are received. Unfortunately, they refuse to adopt one of those readily-available solutions.

22. A familiar phalanx of excuses have been brought forward by clerks fighting to hang on to their no-access-before-process policies: that privacy will be invaded; that it will cost money; that the documents are not official until they are processed. But they do not hold up. First, nearly all states, including Texas, place the responsibility for excluding private identifiers on the filers themselves. A true and correct copy of an article co-authored by Defendant LaVoie is attached as

Exhibit 23 (highlighted for ease of reference). With the exception of Vermont, no state places a duty on clerks to look for and redact private identifiers. Second, pre-process access has not been shown to result in a separate fee in any court. While Tyler is attempting to create a new revenue stream out of the pressure for constitutional access (or trying to protect an existing one), no court has so far been required to pay the vendor for providing pre-processing access, based on my communication with clerks who have switched to pre-processing access. And even were that to be the case, it would not serve as an overriding reason to justify restricting the right of access. Third, the filing of a complaint or petition takes place when it is received, not after it is processed, no matter when it is deemed “official.” The file stamp on a new complaint or petition bears the date when it was received, not when it was processed, and, most significantly, the time of receipt, not the time of processing, stops the ticking of the statute of limitations clock.

23. Chief Judge David Nye in the U.S. District of Idaho made that point recently during a hearing on a motion for preliminary injunction with facts largely identical to those in this case. A true and correct copy of his colloquy with the government’s lawyer is attached as **Exhibit 2**.

Texas Conversion to e-Filing: Follow the Money

24. Courthouse News has covered Travis County District Court since 2003 when I traveled to Travis County District and met the reception clerk “Billy” and the former district court clerk, Amalia Rodriguez-Mendoza. I hired our first reporter to cover that court, Rodney Crouther, and went with him to visit the clerk’s office in this Court where Leigh Lyon was then in charge of the office and is now operations chief deputy in the Northern District of Texas. She kindly brought us into her office to introduce ourselves, then introduced Mr. Crouther to the intake clerk, and explained that he would be coming to the court and looking over the new civil petitions every afternoon. We have covered both the federal and state court in Austin on a daily basis since then.

25. I hired Madison Venza in June of 2005 and she worked as a back-up reporter before becoming the primary reporter for Austin and then regional bureau chief in 2014. She hired reporter Ryan Kocian to cover the Austin courts in around 2010. At the time, Travis County District Court provided traditional access to scans of new paper petitions. Mr. Kocian currently writes the Austin Report under the supervision of Ms. Venza, who occasionally writes the report when Mr. Kocian is sick or on vacation.

26. In 2012, Texas signed an omnibus contract with Plano-based Tyler Technologies (“Tyler”) to provide e-filing software for all the Texas district courts. Among its many provisions, the statement of work in the contract calls for the ability to sort e-filings “by court, filing type, filing status, new suits/additional filings to defined review queues.” Individual court clerks regularly ask for changes in the operation of the e-filing system, based on a list of such requests posted at: https://www.txcourts.gov/media/166686/20210308_efiletexas_issues_clerks_final.pdf. The Travis County District Court then mandated e-filing in 2014. The statewide contract between the Office of Court Administration (“OCA”) and Tyler has been renewed and amended over the last decade and it covers the set up and maintenance of the statewide e-filing portal. Texas lawyers submit their filings to the portal through the modern version of an attorney service, an “e-file service provider.” The process is explained at the EFILETEXAS.gov website, which prominently includes at the top of its landing page a quotation from Texas Chief Justice Nathaniel Hecht: “Every branch of Texas government, particularly the judiciary, is committed to applying technology that enables everyone access to our justice system.” A true and correct copy of the website excerpt is attached as **Exhibit 3**.

27. Since the first five-year contract between Tyler and OCA went into effect in 2012, the deal has been renewed and amended, with a new contract between the same parties to take

effect in the fall of 2022. Under the current contract, Texas courts pay Tyler \$19.6 million per year to lease the company's software. Those sums are described in a 2018 amendment to the contract itself, which is posted on the website of the Texas Judicial Committee on Information Technology, and which can be directly accessed here: <https://www.txcourts.gov/jcit/electronic-filing/>, by clicking on the "Electronic Filing" link that then opens to provide a link to "efile Texas (2012)" and then clicking on "Amendment 4," a true and correct copy of which is also attached as **Exhibit 4**.

28. Amendment 4 memorializes a deal whereby OCA agreed to buy a set of new products from Tyler, including "re:SearchTX", plus a redaction tool that allows the filer to redact before efilng, and the "Tyler Dashboard;" *section 2, subsection 2.1*. The re:search product gathers the public record of all Texas state courts into one place online. As part of the deal, Tyler is required to collect fees for the use of re:SearchTX on behalf of the courts, section 2 subsection 2.5(b), which means, based on the common arrangement between Tyler and other states with such Tyler search sites, individual courts will receive copy fees when users download documents from their court. The dashboard product can be used by OCA to filter filing information by "case category" and by "user," among other filters, section 2.2 subsection 2.6. And the "services" provided by Tyler are defined to include: "system configuration" and "customization" that will "make the Efilng System operational for OCA, the Courts, and Registered Users" per section 2.7 subsection 16.16.

29. Tyler, for its part is allowed to sell searches of the public record of the courts for whatever price it chooses, per section 2.9 subsection 2.5.5.

30. As a result of Amendment 4, the deal's overall cost to OCA over the next three years from 2018 to 2021 jumped from \$72,0700 to \$76,820,000. Thus, for the price of \$4.75 million, OCA paid for two new income streams, one for the courts and one for Tyler.

31. But the clerks also sell public records on their own websites, often for \$1 a page, so they resisted the move to create a central site under Tyler’s control where records are sold for much less. They submitted a bill, H.B. No. 1258, which would have required that the clerks opt into the central search site before it could sell their records. Included in the bill was a provision insulating it from rule changes by the state Supreme Court. The bill was defeated. A true and correct copy of this bill is attached as **Exhibit 5**.

32. Since that time, individual clerks such as Defendant Price and the OCA, through its former director David Slayton, have opposed on-receipt access to new petitions by news organizations. In the face of continuing requests from Courthouse News for on-receipt access to new filings, it is my understanding that OCA “consulted” with Tyler and together they concluded that should the press be given access on-receipt – as they traditionally were with paper – then Tyler would require yet another revenue stream of \$200,000 per year. While Tyler is attempting to extract more income from courts facing a request for constitutional access, Tyler representatives concede that the software is simple, basic, and quickly put in place. In an email exchange with North Carolina court officials, a Tyler manager wrote: “The Media Queue uses data that was filed through Odyssey File & Serve ... So, there is no special customization or filtering, It’s a very quick, simple design.” A true and correct copy of this email exchange is attached as **Exhibit 6**.

33. A similar demand, for \$108,000 per year, was made in New Mexico where Judge James Browning concluded in a ruling last year that a press queue from Tyler would in fact cost nothing. And the same \$108,000 yearly fee was demanded in Idaho where, during a preliminary injunction on February 18, 2022, Chief Judge Nye heard the lawyer for Courthouse News argue: “I’m sorry, but it simply cannot be the case that a vendor can attempt to create a revenue stream and profit from the public record and [that] can constitute a legitimate and compelling

governmental interest that justifies an access restriction.” A true and correct copy of the transcript excerpt is attached as **Exhibit 7**.

34. All of this points to an ongoing situation where the court clerks and court administrators of Texas are using and abusing the public record of the courts to make extra money, and sacrificing public access in pursuit of that goal.

How e-Filing Works in Texas

35. The Texas official explanation of how e-filing works is found by following a convoluted path that starts at EFILETXCOURTS.gov. On the website’s landing page is a tab that says “SERVICE PROVIDERS.” Clicking on the tab brings one to a link called “State Provided EFSP details.” Clicking on that link in turn brings one to a tab called “Training,” which when clicked, brings the reader to a page with a link called “User Guides.” Clicking on that link brings the reader to a page near the bottom of which is yet another link called 2019.1Individual Filer User Guide.pdf. Within that user guide is a set of pages that take a filer through the many required steps to efile..

36. The instructions and the screenshots of the e-filing process attached to the Declaration of Adam Angione demonstrate that the initial intake tasks that were once handled by court clerks at the intake counter in paper courts, such as verifying the correct court location and accepting payment, are now handled automatically by the e-filing software. A true and correct copy of the Declaration of Adam Angione is attached as **Exhibit 8**. Additionally, much of the data entry historically performed by court clerks as part of the post-filing docketing process in paper courts is now entered by the filer before he or she submits the e-filing.

37. As part of its Odyssey suite of e-filing programs, Tyler provides courts with a choice of three public access iterations. The default version used by Defendants withholds new e-

filed civil petitions from the press and public until after court clerks manually process and “accept” them. This is reflected in the question and answer page arrived at by starting at EFILETXCOURTS.gov, clicking on the tab “service providers,” and then clicking on the link “State Provided EFSP details”, and then clicking on the link “Self-Service Support,” then on the tab “Learn all about eFiling,” which brings the reader URL <https://odysseyfileandserve.zendesk.com/hc/en-us/categories/360003807591> where a series of question are posed. A true and correct copy of the question page is attached hereto as **Exhibit 9**.

38. Under the heading “Filing Status” on that questions page is the question: “What happens after I hit submit.” Clicking on that question brings the answer: “After clicking Submit, the document is sent to a court clerk's review queue. You will see the status as Submitted in your Filing History and also receive an email confirming the filing has been submitted. Next step is for the clerk to select that filing for review. It takes the court clerk 1 to 2 business days to complete the reviewing process of the filings.” A true and correct copy of the answer in printed form is attached hereto as **Exhibit 5**.

39. During that estimated period of “1-2 business days,” and often more, the new petition is blacked out to press and public access.

Access to New Civil Petitions Via the Tyler Odyssey Software Suite

40. I have personal experience overseeing Courthouse News’ coverage of courts that use the Tyler’s e-filing software, and I have communicated directly with court clerks and IT personnel at those courts concerning access to new complaints through Tyler’s software. Tyler gives courts using its software several options for making new e-filed civil complaints available to the press and public.

41. To resolve requests by its court clients for public access prior to processing, Tyler offers a “press review queue” or “Media Queue,” which allows credentialed users to see complaints or petitions as soon as they are electronically filed – before they are processed by court staff.

42. A second solution offered by Tyler is one that works like e-filing works in most federal courts, i.e., the software automatically accepts new complaints or petitions, gives them a case number, and pushes them into the docket, where they can be seen by the public. This “auto-accept” system works much like the old wooden press box at the counter in that it allows for review of the new cases right after they cross the virtual intake counter, and processing clerks can then perform administrative tasks afterwards.

43. I address both of these alternatives in more detail below.

The Press Review Queue Solution

44. In 2010, Nevada’s Eighth Judicial District Court in Las Vegas, Nevada, switched to e-filing, using software by a small company called Wiznet. Reporters covering that court long had access to copies of new paper complaints as they crossed the counter. Roughly a year after the court moved to e-filing, and after a Courthouse News lawyer discussed the matter with court officials, the clerk’s office placed an icon on its public access terminals titled “Court Daily.” Through the Court Daily, reporters saw new complaints as they were electronically received, before processing. That timing matched the traditional access reporters previously had to paper complaints and the access being provided in the federal courts through PACER. The new complaints in the Court Daily queue did not have permanent case numbers, only electronic transaction numbers. To my knowledge, this was the first example of what is now called a press queue.

45. Wiznet was purchased by Tyler in or around 2012. Tyler thus inherited the Court Daily, which it redubbed as the “Press Review Queue.” And since then, Tyler has set up press review queues in four courts in Georgia and nine in California, including the superior courts for the counties of Fresno, Kern, Napa, San Mateo, Santa Clara, Santa Cruz, Sonoma, Monterey and Santa Barbara. All of the press queues are controlled by a user name and password and reside within the Tyler software system. The documents in the press queues are not posted on the internet.

46. Most of the press queues in those courts came about as a result of letters I wrote to court clerks and judges at courts using Tyler e-filing software. In those letters, I explained the problem of delayed access caused by withholding new complaints until processing is complete. And in response, many of these clerks asked Tyler to provide a press queue to address the problem of delayed access.

47. For instance, the Fresno Superior Court in California uses Tyler e-filing software, the same as used by Texas courts. Court officials voluntarily agreed to provide a press review queue in 2017. Since then, Courthouse News has enjoyed timely access to new civil complaints without exception. Courthouse News tracked delays in access to new civil complaints filed at the Fresno Superior Court and, since the beginning of this year, Fresno Superior has made 97.4% of new civil complaints available to the press on the day they were filed with a pair of hard-copy, pro se complaints as the only exceptions to perfect access. A true and correct copy of Courthouse News’ tracking sheet reflecting dates on which new complaints were filed in the Fresno Superior during this time period, and the dates on which Courthouse News saw those complaints, is attached as **Exhibit 11**.

48. As the number of Tyler courts using press review queues has increased over time, Tyler has begun promoting its press review queue solution. On April 20, 2021, I exchanged emails

with Tyler's Public Affairs Lead, Nina Minney. As part of this email exchange, Ms. Minney provided me a "Product Statement" for the Odyssey press review queue. A true and correct copy of my email exchange with Ms. Minney is attached as **Exhibit 12**, and a true and correct copy of the "Product Statement" I received from Ms. Minney is attached as **Exhibit 13**.

49. Courthouse News also received a document created by Tyler titled "Press Review Tool Frequently Asked Questions." Courthouse News received this document from counsel for the New Mexico Administrative Office of the Courts ("New Mexico AOC") in connection with pending litigation in the United States District Court for the District of New Mexico, captioned *Courthouse News Service v. New Mexico AOC*, Case No. 1:21-cv-00710-JB-LF (D.N.M.). A true and correct copy of the document titled "Press Review Tool Frequently Asked Questions" that Courthouse News received from the New Mexico AOC is attached as **Exhibit 14**.

50. Although some clerks have recently claimed that Tyler is now requesting six-figure sums on a yearly basis to allow on-receipt access by the press corps, I understand Tyler has provided the press review queue at no cost to courts that have requested it, and specifically, that none of the courts currently providing Tyler press queues have been required to pay additional fees as a result.

51. On May 13, 2020, Courthouse News' counsel in New Mexico, Patrick Rogers, submitted a request for records to the New Mexico AOC concerning Courthouse News' request for access to new civil complaints at New Mexico courts. In response, on May 22, 2020, the New Mexico AOC produced a document Memorandum date November 30, 2018, from New Mexico AOC Director Arthur Pepin, in which he confirms the Tyler press review queue has been provided to courts in Georgia and Nevada at no cost. A true and correct copy of the Pepin Memorandum, without attached exhibits, produced by the New Mexico AOC in response to the records requests

is attached as **Exhibit 15**. The relevant portions on page 3 of the Pepin Memorandum are marked. In that litigation, U.S. District Judge James Browning concluded based on a preponderance of evidence that the press queue would actually cost nothing. “The Court finds by a preponderance of evidence that the addition of Tyler Technologies’ Press Review Queue will not cost the Defendants anything to purchase.”

52. The press queue from Tyler is not unique. Other courts across the nation provide access to new e-filed civil complaints or petitions before they have been processed by court staff through software provided by other vendors or thorough homegrown systems. These courts include the superior courts in Alameda, Los Angeles and Riverside counties in California (through software provided by Journal Technologies), statewide in Arizona (through software provided by Granicus), statewide in New York (through a homegrown system) and in Orange County, California (homegrown).

The Auto-Accept Solution

53. There is also a second solution. Many courts – including the vast majority of federal courts – elect to have new filings automatically sent into their case management systems with permanent case numbers. As a result, new filings can be read by the press and public as soon as they are filed.

54. In 2019, Clark County Superior Court in Las Vegas switched from its former Tyler press queue to a Tyler auto-accept system. Like the federal courts, Tyler’s auto-accept system renders new filings public when they are received, no matter if they are filed in the dawn hours before the clerk’s office opens or the evening hours long after it closes. A true and correct copy of a Notice from Nevada’s Eighth Judicial District Court addressing the change to auto-acceptance is attached as **Exhibit 16**, and a true and correct copy of an email exchange between Courthouse

News bureau chief, Chris Marshall, and a clerk at the Eighth Judicial District Court discussing this topic is attached as **Exhibit 17**.

55. Going outside the Tyler landscape for a moment, many state courts across the country use auto-accept systems configured by other software vendors. They also provide timely access to new civil complaints when they are filed and include the statewide systems in Utah (through software provided by Tybera), Hawaii (through a homegrown system), Alabama (through Online Information Services, or OLIS) and Connecticut (through a homegrown system).

56. Like the great majority of federal courts, this Court and the rest of the U.S. District Courts in Texas also give access to new complaints by automatically sending them into the public docket with a permanent cases number, no matter what time of day or night they are filed.

57. Returning to the Tyler landscape, most significantly and most recently, all state trial courts in Vermont switched over to an auto-accept system using Tyler software. They did so within three weeks of a permanent injunction issued by U.S. District Judge Christina Reiss, saying they could not withhold access until the completion of processing.

58. That injunction was issued November 19, 2021, and by December 10, 2021, Vermont clerks had put an auto-accept system in place, using the same Tyler software that is used by the Texas courts.

59. The day before the auto-accept system kicked into gear, the Vermont Judiciary website posted a memo to all members of the Vermont bar that stated: “Beginning on Friday, December 10, 2021, initial civil complaints that are submitted using the Odyssey File and Serve code ‘initial filing’ will be automatically entered in the Judiciary’s electronic case management system without prior staff review and acceptance. Previously, all electronic filings, including initial complaints and associated documents in such cases, were reviewed by staff before being entered

into the electronic case management system.” A true and correct copy of the memo is attached to as **Exhibit 18**, and the memo can also be located here: <https://www.vermontjudiciary.org/about-vermont-judiciary/memos-vermont-bar>.

The Efficacy of the Press Review Queue and Auto-Accept Solutions

60. The great number and variety of e-filing systems programmed to provide timely access to new civil complaints or petitions is evidence of the simple truth that it is highly practicable to give reporters access to new e-filed civil actions as they are received just as it was with paper filings. In all of those e-filing systems, the initial intake tasks of the counter clerk are now handled automatically by the e-filing software, which requires a designation of court and type of filing, and takes payment. Much of the data entry traditionally associated with post-filing docketing is now entered by the filer before he or she submits the filing. These requirements must be met in order to submit the e-filing. In all those e-filing systems, the new complaint is then received by an E-File Manager, or EFM, which is the mechanical brain of an e-filing system. The flow of e-filing is illustrated at page 26 of the 2020 RFO for a statewide e-filing system that once again went to Tyler, a true and correct copy of which is attached as **Exhibit 19**. The EFM automatically forwards the new petition into a clerk review queue for manual processing before entry into the docket. With the press queue option, the EFM sorts public petitions automatically into the press queue. With the auto-accept option, the EFM pushes the new petitions automatically into the docket. Non-public petitions are electronically designated as such by the filer and sorted aside by the EFM, so they cannot be seen either in the press queue or the public docket.

61. This system works. In California, for example, all non-commercial unlawful detainer complaints are confidential for the first 60 days by state statute, and a lot of these complaints are filed in California’s superior courts every day. Yet we do not see these actions in

the press review queues currently operating in California's superior courts. Nor do they appear in non-Tyler e-filing systems, such as those used in the superior courts of Los Angeles County and Orange County.

62. These different systems yield a common result: access that equals the traditional access that used to be available to reporters in the paper era, in federal and state courts in Texas and elsewhere across the nation.

63. I have attempted since 2020 to convince the OCA to set up a press queue, efforts that included travel from Pasadena, California to Austin for a presentation to the Texas Judicial Committee on Information Technology on Feb. 28, 2020. Over the course of about one hour, I spoke and our attorney presented a set of slides. At the meeting's conclusion, the committee resolved to form a subcommittee to study our request for a press queue. But no one wanted to be the chair. A chair was never appointed and the subcommittee never met.

Opposition By Some State Clerks To Review Queue Access

64. A number of state court clerks around the U.S. have followed the same path as Defendants, taking traditional access away in the transition to e-filing and withholding access to new e-filed complaints until the clerical work is completed. Over the course of two decades, I have observed this trend and fought against it.

65. The history of those battles started in Texas back in 2008 when Harris County Clerk Loren Jackson won a campaign for the clerk's office with the slogan, "Get online not in line." In his zeal, the Texas pioneer of e-filing kicked news reporters out from behind the counter and began withholding the new petitions, most of which were still filed in paper form. He blocked access until they were docketed, scanned and posted on the clerk's website under eDocs, which served as the clerk's publishing arm and a source of revenue for his office.

66. We tried to resolve the problem with the clerk but his subordinates employed a tactic I call the “rope-a-dope,” taking meetings, talking, and doing nothing. Undertaking what was then a drastic measure, I asked our law firm to file a First Amendment action against Jackson. I then testified before U.S. District Court Judge Melinda Harmon in the Southern District of Texas at the hearing on our motion for a preliminary injunction, and I recall her interest when I testified about the access procedures used in her own courthouse. During paper times, her court provided access the old-fashioned way, in a white, plastic, post office bin behind the intake counter. When it moved to e-filing in about 2004, the court gave on receipt access to the new e-filed cases. Judge Harmon issued a preliminary injunction order against Jackson.

67. Two years later, in 2011, similar circumstances came up in Ventura, California, where the clerk Michael Planet insisted on a policy of docketing new paper-filed cases before reporters could see them, a policy that U.S. District Court Judge James Otero, in the Central District of California, first dubbed “no-access-before-process.” The hard-fought litigation resulted in the Central District’s 2016 entry of a permanent injunction against the clerk, as discussed in the accompanying legal memorandum.

68. Later that same year, Courthouse News filed an action against Manhattan’s state court clerk Milton Tingling. The action was prompted by the withholding of a suit by then-candidate Donald Trump against Latino TV network Univision over the cancellation of Trump’s beauty pageant, brought on by his pejorative remarks about Mexicans. Trump had long had a relationship with the New York Post, which frequently wrote about him. Someone in his entourage, if not Mr. Trump himself, leaked his lawsuit to the Post after it was filed but before it was processed. Our reporter went to the Manhattan state courthouse every court day to review new e-

filings through public terminals in the clerk's office, but she was not able to see the case because of the clerk's policy.

69. Ruling on our complaint, U.S. District Court Judge Edgardo Ramos in the Southern District of New York enjoined Mr. Tingling's no-access-before-process policy. A true and correct copy of the transcript of the December 30, 2016 preliminary injunction hearing in that action is attached as **Exhibit 20**. By the next court hearing in that case, six weeks later, New York had instituted a review queue open to press and public that provides access to new complaints on receipt, before processing. Since that time, the New York public review queue has expanded to include all 60 e-filing courts in the state.

70. In Chicago's Cook County Circuit Court, I had gone behind the counter in about 2003 and found classic press access where reporters could check the very last complaints filed that day, stay as long as a supervisor was present, and use the clerk's machine to copy important cases. In her move to e-filing in 2018, Clerk Dorothy Brown took away traditional access and pushed the press corps, who worked on the floor below the clerk's office, behind processing. In 2018, in the *Brown* case, U.S. District Court Judge Matthew Kennelly of the Northern District of Illinois enjoined her no-access-before-process policy. That ruling was later knocked out by the Seventh Circuit on abstention grounds, the worst defeat suffered by Courthouse News in its long campaign to take back the traditional access taken away by state court clerks under cover of e-filing.

71. In Prince William County, Virginia, the action that triggered our First Amendment case of *Courthouse News v. Schaefer* was the decision by the newly elected Prince William clerk to halt traditional access to new paper cases at the counter, before processing. She relegated our reporter to computer terminals where the reporter worked below a prominent sign that said one could expect a delay of ten days for the clerk to scan and index filings. The clerk in Norfolk County

Circuit Court followed the same policy. After a four-day trial, U.S. District Court Judge Henry Coke Morgan Jr. in the Eastern District of Virginia declared that the actions of the two clerks violated the constitutional right of access. The Fourth Circuit Court of Appeals affirmed Judge Morgan's ruling last year.

72. Also last year, U.S. District Court Judge Dolly Gee in the Central District of California brought to a close the merits segment of a ten-year litigation saga in the *Planet* litigation by issuing an amended judgment that tracked Judge James Otero's 2016 injunction saying the right of access attaches on receipt. A true and correct copy of that judgment is attached as **Exhibit 21**.

73. Then in October of 2021, U.S. District Judge Reiss pointed out during oral argument that but for the processing by human clerks: "[T]here would be no delay in an e-filing system. There could be 1,000 complaints; there could be 100,000 complaints. There's no delay. The only delay that's going to show up in e-filing is when you insert a staff member into it to do something else. Right? Because [efilers are filing] with all of the document information that they need, and it's hitting the docket, and there isn't any step in between there by staff. ... So that, by definition, means that the delay is in this review process." A true and correct copy of the ruling with that passage highlighted is attached as **Exhibit 22**.

74. Judge Reiss then issued a permanent injunction barring the state's court clerks from withholding access until the completion of processing. And now those clerks allow the press and public to see new complaints when they are received through Tyler's auto-accept software.

75. The campaign to reclaim access that was taken away by state court clerks in the transition to e-filing has cost Courthouse News millions of dollars in attorney fees with only a small percentage of those outlays recouped in fee awards. None of those cases have been undertaken lightly. They drive a hole in our news service's budget and demand intense and lengthy

devotion of time by Courthouse News staff, myself, and our attorneys. The decision to pursue these cases arises out of an overriding sense that a great premise of American courts – their openness to the people of their communities – is under attack. I strongly believe, and so does the Texas Chief Justice, that technology should illuminate the halls of government, not darken them.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Pasadena, California on this 17 day of March, 2022.

A handwritten signature in dark ink, appearing to read 'W. Girdner', written over a horizontal line.

William Girdner

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

COURTHOUSE NEWS SERVICE,)

Plaintiff,)

v.)

Civil Action No.:
2:18cv391

GEORGE E. SCHAEFER, in his)
Official Capacity as Clerk of)
the Circuit Court for Norfolk,))
Virginia,)

JACQUELINE C. SMITH in her)
Official Capacity as Clerk of)
the Circuit Court for Prince)
William County, Virginia,)

Defendants.)

TRANSCRIPT OF PROCEEDINGS

(Bench Trial)
Volume 4
Pages 540-599

Norfolk, Virginia
February 5, 2020

BEFORE: THE HONORABLE HENRY C. MORGAN
United States District Judge

1 Appearances:

2 BRIAN CAVE LEIGHTON PAISNER LLP

By: WILLIAM HIBSHER

3 HEATHER GOLDMAN

BRYAN HARRISON

4 **-- and --**

WILLCOX & SAVAGE

5 By: CONRAD M. SHUMADINE, ESQUIRE

Counsel for Plaintiff

6 THOMPSON McMULLAN PC

7 By: WILLIAM DANIEL PRINCE, IV

MICHAEL GORDON MATHESON

8 Counsel for Defendants

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P R O C E E D I N G S

(Proceedings commenced at 10:04 a.m. as follows:)

COURTROOM DEPUTY CLERK: Civil Action No. 2:18cv391,
Plaintiff Courthouse News Service v. George E. Schaefer, et al.

For the plaintiffs, Mr. Hibsher, Ms. Goldman, Mr.
Harrison and Mr. Shumadine, are you ready to proceed?

MR. SHUMADINE: We're ready.

COURTROOM DEPUTY CLERK: For defendants, Mr. Matheson
and Mr. Prince, are you ready to proceed?

MR. PRINCE: Good morning. We're ready.

THE COURT: All right. I'll hear first from counsel
for the plaintiff. I believe the plaintiff indicated you wanted
to be notified when you reached 10 minutes remaining?

MS. GOLDMAN: Correct, Your Honor.

THE COURT: Josh, have you got that?

LAW CLERK: Yes Judge.

MS. GOLDMAN: Good morning, Your Honor.

THE COURT: Good morning.

MS. GOLDMAN: This case is about a fundamental
Constitutional right, the First Amendment, and the right of the
press and the public to contemporaneously access new civil
complaints, a right that was violated in this case by
defendants' policies and practices of insisting on complete

1 there and made the necessary adjustments to be ready for trial
2 as soon as the court was ready is, I wish we had more people who
3 did it that way instead of wanting to postpone things, as we
4 take great pride in trying to move cases along. But the more
5 help we get from the attorneys, the better we can do it.

6 MR. PRINCE: That's life in the Eastern District of
7 Virginia.

8 THE COURT: Both parties should be commented for that.

9 MR. PRINCE: Thank Your Honor.

10 We've listened to Your Honor's comments throughout the
11 course of this trial and at the summary judgment hearing we had
12 a couple weeks ago. You've made a couple things clear. You
13 think that this is a First Amendment case. You believe the
14 First Amendment right of access applies to newly filed civil
15 complaints. As Your Honor knows, we disagree with that. Our
16 position is the right of access under the First Amendment does
17 not apply to newly filed civil complaint. There's a common law
18 right of access. But I'm not going to belabor that point
19 because you've been clear that you believe that there is a First
20 Amendment right here.

21 THE COURT: I haven't been persuaded otherwise, unless
22 you can do so. I think that the point the plaintiff's making is
23 that it has its news value as soon as it happens. We're all
24 going through that. Anybody who's looked at the current
25 situation in Iowa illustrates what that means. If you don't get

1 it when it's fresh, it's like stale bread or stale anything
2 else. So I think the plaintiff's point on that is well-taken.

3 MR. PRINCE: And I think that my clients would more or
4 less agree with that. They are public servants. They believe
5 in transparency. They believe in open government. They operate
6 their clerk's offices that way. And it goes without saying,
7 they are, they recognize the importance of the First Amendment,
8 which is what's made this case very difficult for them. Because
9 as public servants and the custodians of a large volume of
10 public records, they're the custodians of all civil and criminal
11 court records filed in the circuit courts in their
12 jurisdictions.

13 THE COURT: Well, it's a very important job. And I
14 think that the dispute here is really very narrow. I think
15 we're talking about the difference between same-day and one
16 court day. And that's the difference.

17 MR. PRINCE: So Your Honor, you know, I don't want to
18 spend my time on the First Amendment issue. We've made our
19 arguments in our papers --

20 THE COURT: I'm not suggesting that you do.

21 MR. PRINCE: -- but I do want to say this: That
22 assuming without conceding that there is a First Amendment right
23 here --

24 THE COURT: I understand.

25 MR. PRINCE: -- the Fourth Circuit has been clear that

Exhibit 2

1 THE COURT: Ms. Duke, if I can interrupt for just a
2 minute.

3 MS. DUKE: Sure, Your Honor.

4 THE COURT: Tell me how it works if a plaintiff's
5 lawyer on Friday afternoon files a complaint -- well, submits
6 a complaint under your argument, and that's the last day of
7 the statute of limitations, but the case isn't actually filed
8 until Monday when it's reviewed. Have they lost their statute
9 of limitations argument?

10 MS. DUKE: No. I don't believe anything in the rules
11 provides that, Your Honor.

12 THE COURT: So it is filed when it's submitted?

13 MS. DUKE: Well, it's been provided to the court, and
14 we have the specific provision that indicates that it's
15 effectively accepted with a three-day window for corrections
16 to be made.

17 THE COURT: And then that's a Idaho Supreme Court --

18 MS. DUKE: The correction does not impact --

19 THE COURT: What rule is that?

20 MS. DUKE: Well, let me -- I will get it to Your
21 Honor --

22 THE COURT: Is it 12?

23 MS. DUKE: -- in one moment. I think it is 12, but
24 let me -- let me get that to Your Honor.

25 THE COURT: I guess my real question is, is that so

1 for some purposes, the complaint is deemed filed when it is
2 submitted to the court? But for other purposes, including
3 today's argument, you're saying it's not filed until it's been
4 reviewed and accepted?

5 MS. DUKE: Well, and that's why I think the rules
6 have addressed that issue, and that is mistakes happen. And
7 in the old days of filing with -- you know, where we had a
8 runner run over -- and that's how I started my legal career.
9 I was a runner who would run to the courthouse. I would take
10 the documents, and they would stamp them. Or my heart would
11 skip a beat, and the clerk would say, "Sorry, you're missing
12 this," and I would have to sprint back to the office to have
13 it filed.

14 And it is Rule 12 that you're referencing. And what
15 it -- what it envisions is that we get -- in the electronic
16 world, given that you're able to file these in the middle of
17 the night, on Christmas Day, you know, whenever it is, we
18 don't want a litigant to be prejudiced if there's some
19 ministerial issue with their -- with their filing, and
20 therefore we provide a grace period of three days for a
21 correction to be made so that it can revert back to the
22 original date of submission.

23 And that's the practical impact of -- it's not Keely
24 walking it up to the clerk's office and having my heart skip a
25 beat and realize that we didn't have a signature or a filing

Exhibit 3



HOME

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ACTIVE COURTS

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FAQS

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“Every branch of Texas government, particularly the judiciary, is committed to applying technology that enables everyone access to our justice system.”

– Nathan Hecht, Chief Justice, Supreme Court of Texas

e-Filing is now mandatory for all attorneys filing civil, family, probate, or criminal cases in the Supreme Court, Court of Criminal Appeals, Courts of Appeals, and all district and county courts. While not required, non-attorney filers are encouraged to file as well. Some JP Courts also permit e-Filing.

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Exhibit 4

**Amendment No. 4
To the
Electronic Filing Agreement**

This Amendment No. 4 (this "**Amendment No. 4**") is made and entered into as of September 27, 2018 ("**Amendment No. 4 Effective Date**") by and between Tyler Technologies, Inc. ("**Tyler**") and the Texas Office of Court Administration ("**OCA**").

Recitals

- A. Tyler and the OCA previously entered into an Electronic Filing Agreement with an effective date of November 8, 2012 (the "**Agreement**") that was amended on July 23, 2013, on August 12, 2013, and on July 22, 2016.
- B. The parties desire to further amend the Agreement as set forth in this Amendment No. 4 for the purpose of adding various redaction services and reporting analytics functionality (hereafter referred to as "Tyler Dashboard") as additional functionality to the Agreement, as further detailed herein. The parties also desire to amend the Agreement to reflect the implementation of the Document Search/Retrieval and Storage contemplated in the Agreement by amending the Statement of Work provisions in Attachment A and any other provisions of the Agreement related to the Document Search/Retrieval and Storage (hereafter referred to as "re:SearchTX").

Agreement

1. **Definitions.** All terms defined in the Agreement with the initial letters capitalized will have the same meanings when used in this Amendment No. 4.

2. **Amendments.**

- 2.1 The following provisions are hereby added as Subsections 1.1(a) and 1.1(b) of the Agreement:

1.1(a) License Grant for Tyler Redaction Solution and re:SearchTX. Tyler hereby grants to OCA a non-exclusive, revocable license (and sublicense with respect to Embedded Third Party Software) to the Tyler Redaction Solution and re:SearchTX for use by the State's appellate, district, county, municipal, probate, and justice courts, their clerks and other designated court staff (the "Courts") and by an unlimited number of Registered Users. As long as the Agreement remains in effect, OCA will continue to have access to the Tyler Redaction Solution and re:SearchTX as described in this Subsection 1.1(a). The Courts and the Registered Users may be required to accept a "click-thru" or other license that has been approved by OCA prior to use of these solutions. To the extent any provision of this Agreement conflicts with the terms of a "click-thru" or other license accepted by the Courts and Registered Users, this Agreement shall control. The foregoing license (and right to sublicense) shall be automatically revoked upon the expiration or termination of this Agreement.

1.1(b) License Grant for Tyler Dashboard. Tyler hereby grants to OCA a non-exclusive, revocable license (and sublicense with respect to Embedded Third Party Software) to

the Tyler Dashboard for use only by the OCA. As long as the Agreement remains in effect, OCA will continue to have access to the Tyler Dashboard as described in this Subsection 1.1(b). The foregoing license (and right to sublicense) shall be automatically revoked upon the expiration or termination of this Agreement.

2.2 The following provisions are added as Subsections 2.5 and 2.6 of the Agreement:

2.5 Tyler Redaction Services. Tyler shall provide both automated and manual redaction services for the Registered User(s) of eFileTexas.gov and re:SearchTX.gov in accordance with the terms of the Statement of Work for Redaction Services attached hereto as Attachment A. The Tyler Redaction software performs redaction services, all of which are a part of the Odyssey File and Serve System and shall be subject to the License Grant contained in Subsection 1.1(a) above.

2.6 Tyler Dashboard Services. At no additional cost to the OCA, and pursuant to a mutually agreed upon project plan, Tyler will provide to OCA, for use only by the OCA, an internal-facing analytics dashboard (the "Tyler Dashboard") surfacing near-real time visualizations of data contained in the Electronic Filing Manager licensed to OCA under the Agreement to track the following key performance measures: filing volume; acceptance/rejection rates; timeliness of clerk action; and total number of registered users. These measures will be filterable by: filing type; court; county; statewide; EFSP; case category; and login/clerk user. The Tyler Dashboard will enable users to click through these metrics to reveal additional detail, and the underlying data can then be exported or be programmatically accessed via an API.

2.3 Subsection 6.1 of the Agreement is amended as follows (the new language is underlined):

6.1 Tyler Proprietary Rights. The eFiling System (including Tyler Redaction and re:SearchTX functionality), Tyler Dashboard, Tyler Payment Portal, User Documentation, Tyler's Technology and Tyler's Web Site (including URL) constitute or otherwise involve valuable Proprietary Rights of Tyler. No title to or ownership of the eFiling System, Tyler Dashboard, Tyler Payment Portal, User Documentation, Tyler's Technology or Tyler's Web Site, or any Proprietary Rights associated therewith, are transferred to OCA or any third party under this eFile Agreement.

2.4 Subsection 3.1 of the Agreement is amended as follows (the new language is underlined deleted language is struck through):

3.1 Use Fees/Payment. During the term of the Agreement from November 8, 2012 through August 31, 2017 ("Original Term"), Tyler's fees and expenses associated with the Services shall be paid by the OCA as set forth in Attachment B. In no event shall payment exceed Seventy-Two Million, Seventy Thousand Dollars (\$72,070,000) during the Original Term of this Agreement and no annual payment total provided for each state fiscal year during the Original Term of this Agreement as set forth in Attachment B. Tyler acknowledges and agrees that payments for services provided under this Agreement are subject to OCA's receipt of funds appropriated by the Texas Legislature. Tyler acknowledges and agrees that if appropriated funds are not sufficient to make the

payments provided in Attachment B-1, OCA, in its discretion, may terminate this Agreement. During the term of the Agreement Extension Period, in accordance with the Agreement provision that extensions are available at the same price, terms and conditions, OCA shall pay Tyler for fees and expenses associated with the Services provided during the Agreement Extension Period an amount not to exceed [~~Seventy-Two Million Seventy Thousand Dollars (\$72,070,000.00)~~] Seventy-Six Million, Eight Hundred Twenty Thousand Dollars (\$76,820,000) as set forth in Attachment B-1. Tyler acknowledges and agrees that payments for services provided under this Agreement during the Extension Period are subject to OCA's receipt of funds appropriated by the Texas Legislature. Tyler acknowledges and agrees that if appropriated funds are not sufficient to make the payments provided in Attachment B-1, OCA, in its discretion, may terminate this Agreement.

2.5 Subsections 3.2 and 2.3 are amended as follows (the new language is underlined):

Subsection 3.2-

3.2. (a) Collection of Filing Fees. Tyler shall, on behalf of the Courts, collect all Filing Fees for Documents filed pursuant to this eFile Agreement from Registered Users of the eFiling System. Filing Fees shall be transferred to the Courts pursuant to the Member Bank Agreement that Tyler may require Courts to execute. Credit card fees may not be deducted from any Filing Fees paid to the Courts. Except for Government Filers and indigent filers who are not required to pay Filing Fees, Tyler shall not accept any Court Document for filing unless the required Filing Fee accompanies it.

(b) Collection of re:SearchTX Fees. Tyler shall, on behalf of the Courts, collect fees set by the Supreme Court of Texas for the use of re:SearchTX. The fees may be adjusted from time to time by the Supreme Court of Texas and the change will be implemented by Tyler within thirty (30) days of Tyler's receipt of written request to make the change by the Office of Court Administration. Such fees are deposited directly to the Court's account.

Subsection 2.3 –

(h). To the extent permitted by law, Tyler may assess the following convenience fees for re:SearchTX transactions:

Credit Card - \$0.35

eChecks - \$0.25

2.6 Attachment B-1 is amended as follows for Fiscal Years 2019, 2020, and 2021:

#	E-Filing Service Period	Use Fees for Services Provided	Invoice Amount
2019 Texas OCA Fiscal Year:			
49	September 2018	\$ 1,633,402	
50	October 2018	\$ 1,633,402	
51	November 2018	\$ 1,633,402	4,900,206
52	December 2018	\$ 1,633,402	
53	January 2019	\$ 1,633,402	
54	February 2019	\$ 1,633,402	4,900,206
55	March 2019	\$ 1,633,402	
56	April 2019	\$ 1,633,402	
57	May 2019	\$ 1,633,402	4,900,206
58	June 2019	\$ 1,633,402	
59	July 2019	\$ 1,633,402	
60	August 2019	\$ 1,633,402	4,900,206
Total 2019 Texas OCA Fiscal Year		\$ 19,600,824	\$ 19,600,824

#	E-Filing Service Period	Use Fees for Services Provided	Invoice Amount
2020 Texas OCA Fiscal Year:			
49	September 2019	\$ 1,633,402	
50	October 2019	\$ 1,633,402	
51	November 2019	\$ 1,633,402	4,900,206
52	December 2019	\$ 1,633,402	
53	January 2020	\$ 1,633,402	
54	February 2020	\$ 1,633,402	4,900,206
55	March 2020	\$ 1,633,402	
56	April 2020	\$ 1,633,402	
57	May 2020	\$ 1,633,402	4,900,206
58	June 2020	\$ 1,633,402	
59	July 2020	\$ 1,633,402	
60	August 2020	\$ 1,633,402	4,900,206
Total 2020 Texas OCA Fiscal Year		\$ 19,600,824	\$ 19,600,824
#	E-Filing Service Period	Use Fees for Services Provided	Invoice Amount
2021 Texas OCA Fiscal Year:			
49	September 2020	\$ 1,633,402	
50	October 2020	\$ 1,633,402	
51	November 2020	\$ 1,633,402	4,900,206
52	December 2020	\$ 1,633,402	
53	January 2021	\$ 1,633,402	
54	February 2021	\$ 1,633,402	4,900,206
55	March 2021	\$ 1,633,402	
56	April 2021	\$ 1,633,402	
57	May 2021	\$ 1,633,402	4,900,206
58	June 2021	\$ 1,633,402	
59	July 2021	\$ 1,633,402	
60	August 2021	\$ 1,633,434	4,900,238
Total 2021 Texas OCA Fiscal Year		\$ 19,600,856	\$ 19,600,856
Total Payments - Agreement Extension Period		\$ 76,820,000	\$ 76,820,000

2.7 Subsection 16.16 of the Agreement is amended as follows (the new language is underlined):

16.16 "Services" mean the implementation, training, system configuration, customization, consulting or other services performed and to be performed by Tyler to make the eFiling System, including Tyler Redaction Solution, re:SearchTX, and the Tyler Dashboard, operational for OCA, the Courts, and Registered Users, as set forth in Attachment A, Statement of Work.

2.8 The following definitions are added to Subsection 16 of the Agreement.

16.31 "Structured Document" means a document that (i) is a form, and (ii) that contains the same type of data in exactly the same placement on each page. The document can be a single-page form or a multi-page form, but the number of pages is constant and exactly the same in every such document.

16.32 "Structured Data" means the following data elements with a known structure, which may be modified by mutual agreement of the parties:

16.32.1 Social Security Numbers presented in one of the following formats:

- XXX-XX-XXXX
- XXX|XX|XXXX
- XXX XX XXXX

16.32.2 Tax Identification Numbers presented in one of the following formats:

- XX-XXXXXXXX
- XX/XXXXXXXX
- XX XXXXXXXX

16.32.3 Credit Card Numbers presented in one of the following formats:

Visa:

- 4xxx-xxxx-xxxx-xxxx
- 4xxx xxxx xxxx xxxx
- 4xxxxxxxxxxxxxxxxx

Mastercard:

- 5xxx-xxxx-xxxx-xxxx
- 5xxx xxxx xxxx xxxx
- 5xxxxxxxxxxxxxxxxx
- 2xxx-xxxx-xxxx-xxxx
- 2xxx xxxx xxxx xxxx
- 2xxxxxxxxxxxxxxxxx

Amex:

- 34xx-xxxx-xxxx-xxx
- 34xx xxxx xxxx xxx
- 34xxxxxxxxxxxxxxxxx
- 37xx-xxxx-xxxx-xxx

- 37xx xxxx xxxx xxx
- 37xxxxxxxxxxxxxxxxx

Discover:

- 6011-xxxx-xxxx-xxxx
- 6011 xxxx xxxx xxxx
- 6011xxxxxxxxxxxxxxxxx

Diners:

- 300xxxxxxxxxxxxxxxxx
- 301xxxxxxxxxxxxxxxxx
- 302xxxxxxxxxxxxxxxxx
- 303xxxxxxxxxxxxxxxxx
- 304xxxxxxxxxxxxxxxxx
- 305xxxxxxxxxxxxxxxxx
- 36xxxxxxxxxxxxxxxxx
- 38xxxxxxxxxxxxxxxxx

16.32.4 Birth Dates presented in one of the following formats that contain contextual information to help with identification:

- MMM DD, yyyy
- MMM D, yyyy
- MM-DD-yyyy
- MM-D-yyyy
- MMM dd, yy
- yyyy-MM-dd
- yyyy/MM/dd
- DOW, MMM dd, yyyy (DOW – Monday, Tuesday, etc.)
- MM/dd/yyyy
- M/D/yyyy
- MM-DD-yy
- MM/DD/yy

16.33 “Unstructured Document” means any document not defined above in Section 16.31.

16.34 “Unstructured Data” means any data element not defined above in Section 16.32 but that contains contextual information to help with identification.

2.9 As a result of the implementation of the Document Search/Retrieval and Storage functionality known as re:SearchTX, Section 2.5 of Attachment A of the Agreement is hereby deleted and replaced with the following.

2.5 re:SearchTX

Tyler must provide electronic document storage that can scale to the number of documents being stored.

2.5.1 re:SearchTX Portal

Tyler shall create a secured, access-controlled portal that will allow a user to search meta information to identify a document.

The results obtained from the search must be presented to the user in a way that guides them to the appropriate resource for obtaining a copy of the document.

Documents may include accepted electronic filings, rulings, opinions or any other document that the clerk deems appropriate for the system.

Document meta information may be provided by accepted electronic filings or by clerks via either the Inbound Document Connector or via re:SearchTX.

Documents uploaded must conform to Technology Standards promulgated by JCIT. Tyler may work with the clerks to upload rulings, orders, and any other valued documents into re:SearchTX.

2.5.2 Inbound Document Connector

Tyler shall provide an XML-based, secured, access-controlled web service that will allow clerks to upload documents and or meta information into the document storage system.

Upon a successful submission, the Inbound Document Connector must provide a success code and a confirmation number back to the clerk. If the submission is unsuccessful, the Inbound Document Connector must return an error to the clerk's office.

Direct access to the Inbound Document Connector must be available to courts and clerks in the event they have sufficient technology resources to support it.

2.5.3 Document Loading Portal

Tyler shall create a secured, access-controlled portal that allows the Courts and clerks to:

- Upload documents into re:SearchTX. The portal must collect the document meta information and index the document and meta information.
- Update existing documents and meta information that were electronically filed into their Court, or that originated from their Court.

2.5.4 Standard Functionality.

- User access to the case index and documents will be governed by the Technology Standards approved by the Supreme Court of Texas, as such standards exist as of the Amendment No. 4 Effective Date, and as further amended, subject to reasonable changes that can be accommodated through existing solution capabilities.
- User groups for the standard functionality shall be as defined in the Technology Standards. Standard functionality includes the ability for users to search for court records and documents using the meta information contained in re:SearchTX. Users may also view the case index of the court records. The access to view documents may incur a cost, as defined in the Agreement.
- At a minimum, case meta information must contain assigned court, case number, case name, case initiation date, litigant names/information, and filings.

2.5.5 Optional Value-Added Services for Users.

- Beginning on January 1, 2019, Tyler may, at a price determined by Tyler, offer the following optional value-added services for Users without the prior consent or authorization from OCA: saved searches, organizational folders, alerts/notifications, in-document text searches, personalized filing feed, export search results, customized notes, and data analytics and advanced reporting.

- Any additional optional value-added services for Users must be defined and agreed upon by Tyler and the OCA. Tyler will specifically identify (within the release notes) any additional optional value-added services. OCA shall have seven (7) days to object in writing to any such additional optional value-added services.
- To gain access to optional value-added services for Users, Tyler may assess subscription fees or transaction fees to Attorney and Public Users. Fees may be transactional or offered through a subscription service (monthly and/or annually).

2.10 As a result of OCA's election to implement redaction services, Section 2.7 is added to Attachment A of the Agreement as follows:

2.7 Redaction Services

Tyler must provide redaction services that review and redact documents for sensitive information as prescribed by rule 21c of the Texas Rules of Civil Procedure ("Sensitive Data Rule").

2.7.1 Manual Redaction Portal

In the event the user decides to review redaction candidates, Tyler will provide a portal for users to review, add, modify, or delete redaction candidates prior to burn-in.

2.7.2 Automatic Redaction

In the event the user decides to let the service automatically redact, the Tyler Redaction Solution will review the submitted document to identify redaction candidates. Upon a clerk's acceptance of such redacted document, the Tyler Redaction Solution will burn-in all found candidates.

2.7.3 Inbound Document Connector

Tyler shall provide an XML-based, secured, access-controlled web service that will allow authorized EFSPs and clerks to load documents and to indicate manual or automatic redaction services. Once redaction is completed, the web service must return the redacted copy to the service requesting redaction services.

2.7.4 Connected Services

Tyler shall provide redaction services to the filer using the state provided EFSP and to court clerks using the EFM and re:SearchTX.

2.11 The fifth Deliverable listed in Attachment C and the corresponding Completion Date are deleted in their entirety and replaced with the following:

<p>re:SearchTX</p> <ul style="list-style-type: none"> • re:SearchTX portal • Inbound document connector • Document loading portal 	<p>Tyler and the OCA will work together and negotiate in good faith to create a mutually agreeable timeline</p>
<p>Redaction Services</p> <ul style="list-style-type: none"> • EFSP connectors • EFM redaction services • Document loading portal redaction services 	<p>Tyler shall make the Tyler Redaction Solution available to the OCA no later than September 30, 2018</p> <p>Full implementation – within 30 days of accuracy certification (accuracy certification targeted no later than October 31, 2018)</p>

2.12 As a result of OCA’s election to implement redaction services, Section 6 is added to Attachment D of the Agreement as follows:

6. Redaction Services Accuracy

Tyler will ensure that all documents passing through the redaction service are properly redacted. Redaction accuracy rates are determined by the number of candidates successfully identified compared to all redaction candidates.

The following are the service level goals for redaction services:

Categories	Structured Data	Unstructured Data
Structured Document	97%	90%
Unstructured Document	90%	80%

2.13 As a result of OCA’s election to implement redaction services, the following language is added to Section 4.3 of Attachment A of the Agreement:

- The number of structured data in structured documents redaction candidates identified.
- The number of unstructured data in structured documents redaction candidates identified.
- The number of structured data in unstructured documents redaction candidates identified.
- The number of unstructured data in unstructured documents redaction candidates identified.
- The number of documents passed through the redaction service by service entry (EFSP, EFM, re:SearchTX).
- The average amount of time for automatic redaction documents to process through the redaction service.

2.14 As a result of OCA’s election to implement redaction services, the following language is added to Section 4 of Attachment D of the Agreement:

In the event that Tyler does not reach service level goals for redaction accuracy, the following credit will occur on the following quarterly invoice:

Categories	Structured Data		Unstructured Data	
	Accuracy Rate	Credit to OCA	Accuracy Rate	Credit to OCA
Structured Documents	97%-100%	\$0	90%-100%	\$0
	90%-96.9%	\$11,875	85%-89.9%	\$11,875
	80%-89.9%	\$27,708	78%-84.9%	\$19,792
	Below 80%	\$98,958	Below 78%	\$59,375
Unstructured Documents	85%-100%	\$0	80% - 100%	No Action
	80%-84.9%	\$11,875	40% - 80%	Remedial Action will be taken.
	70%-79.9%	\$19,792		
	Below 70%	\$59,375	Below 40%	\$7,917

OCA will work with Tyler to submit test documents through the redaction service each quarter to gauge redaction accuracy. The penalties listed above as “Credit to OCA” for accuracy rates that fail to meet service level goals for a given category will apply only if 100 or more documents have been provided by OCA to Tyler for testing in the quarter for that category.

3 Effectiveness. This Amendment No. 4 will be effective as of the Amendment No. 4 Effective Date. Except as set forth in this Amendment No. 4, the Agreement remains unchanged and in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 4 and it is effective upon the Amendment No. 4 Effective Date.

TYLER TECHNOLOGIES, INC.

TEXAS OFFICE OF COURT ADMINISTRATION

By: Sherry Clark
 Name: Sherry Clark
 Title: Sr. Corporate Attorney

By: David Slayton
 Name: David Slayton
 Title: Administrative Director

Exhibit 5

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Search knowledge base

[eFile](#) / [Electronic Filing](#) / [Filing Status](#)

Articles in this section



What happens after I click on Submit?

Last updated 10 months ago

After clicking Submit, the document is sent to a court clerk's review queue. You will see the status as Submitted in your Filing History and also receive an email confirming the filing has been submitted.

Next step is for the clerk to select that filing for review. It takes the court clerk 1 to 2 business days to complete the reviewing process of the filings.

For more detailed information about your case please click the link below

[Who do I ask about my case status, court date and other information about my case.](#)

Was this article helpful?

Yes No

72 out of 103 found this helpful

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[What is the Fees section? How do I get to the summary to submit the filing?](#)

[What is the Service Contacts section?](#)

[What is the Filings section? Filings section FAQ](#)

[What is the Party Information section?](#)

Products

- eFile
- re:Search
- Guide & File
- Online Dispute Resolution

Resources

- Legal Professionals
- Filers without lawyers
- Internal Use only

Help centers

- eFile
- re:Search
- Guide & File
- Online Dispute Resolution
- eFile and Serve Cloud

Contact

-  Contact us

Exhibit 6

Friday, February 12, 2021 at 18:28:10 Eastern Standard Time

Subject: RE: Portal & Media Review Queue - discussion & demos
Date: Thursday, May 14, 2020 at 1:08:12 PM Eastern Daylight Time
From: Campos, Cindy
To: Cynthia Blackwell, Fowler, Brad D.
CC: Andrejko, Bob
Attachments: image001.png, image002.png, image003.png, image004.png, image005.png

Cindy...Steven Steven.Pham@tylertech.com, Shannon, and I can join today at 4pm. Dennis asked to be included and will join if his other meeting ends early.

Additionally, Dennis provided the following key points.

Here is the information that we went over with during the Media Queue demo.

With the Media Queue "Press Review", there is very little to the functionality and it was designed to accommodate states that required access to cases prior to acceptance.

This Media Queue uses data that was filed through Odyssey File & Serve, it can't be configured to only show certain columns. So, there is no special customization or filtering, It's a very quick, simple design.

You must have registered with Odyssey File & Serve to gain access. Typically we will provide one access point at the State or county level to allow them to pass it out as requested.

You can configure what items can/cannot show such as:

- **Case Types**
 - **CaseTypeCodes** – Cases that should be included in the Press Review Site.
- **Age of Filings**
 - **Days** – Optional, int. This is the number of days that documents should be included. Documents that are older than this date will be omitted from the Press Review Site.
- **Filing State(Submitted/Draft/Under Review/Accepted)**
 - **FilingStates** – Optional, string. Any filing not in one of these states will be omitted from the Press Review Site.
- **Case Security Groups(if any) that shouldn't show**
 - **SecurityGroupsToOmit** – Optional, string. list of case security group code that are to be omitted. Any filing linked to a case with one of these security groups will be omitted from the Press Review Site.
- **Document Types that shouldn't show**
 - **DocTypesToOmit** - Optional, string. list of document type code words that are to be omitted from the press review site.

Cindy Campos
Professional Services Manager
P: 972.713.3770 ext: 113240
C: 214.336.4393

www.tylertech.com

From: Blackwell, Cynthia G. <Cynthia.G.Blackwell@nccourts.org>
Sent: Thursday, May 14, 2020 11:43 AM
To: Campos, Cindy <Cindy.Campos@tylertech.com>; Fowler, Brad D. <Brad.D.Fowler@nccourts.org>
Cc: Andrejko, Bob <Bob.Andrejko@nccourts.org>
Subject: Portal & Media Review Queue - discussion & demos

Cindy, rather than just demonstrating a wild card search in Portal we need repeat demos of Portal and Media Review Queue for the Advisory Committee on Thursday 5/21. Brad would like to discuss this further with you, Shannon, and possibly Dennis and Steven as soon as possible. Could you and your team be available for a

4:00 meeting today? If not, how about tomorrow at 3:15?



Cynthia G. Blackwell
eCourts Project Coordinator
eCourts Project Management Office
North Carolina Judicial Branch
O 919-890-2059
M 910-824-9446

Justice for all
www.NCcourts.org



E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

Exhibit 7

1 questions portion of the iCourt website.

2 So there's simply no nexus between defendant's
3 current practice and the hypothetical harm she claims could
4 result if the Idaho courts applied one of the available less
5 restrictive alternatives. And of course, courts handle
6 confidential filings, documents, and sensitive information all
7 the time. That's the nature of the business. And that
8 includes courts that provide access without delaying it for
9 clerical review. So there are less restrictive alternatives.

10 Defendant also points to cost as the reason why the
11 Idaho courts supposedly cannot provide access to complaints
12 through a press queue. She claims that Tyler, the e-filing
13 vendor, has quoted a price tag of \$108,000 annually --
14 annually -- to provide access through the review future that
15 already exists. And we know from experience it does not cost
16 that amount or any amount. Numerous courts using Tyler
17 software have confirmed that Tyler did not charge them for
18 their press queues. This is in the opening and the
19 supplemental record declarations.

20 In New Mexico, Judge Browning found, based on a
21 preponderance of the evidence, that there would be no charge
22 for a press queue even though the defendant in that case
23 cited -- or quoted the same price tag from Tyler. And in
24 Arizona, the state court administrator arranged for its vendor
25 to create a press queue from scratch for a onetime charge of

1 \$12,500.

2 So, you know, perhaps most troubling here is that
3 this quoted price tag of \$108,000 appears to represent an
4 attempt by Tyler, a third-party vendor, to create an annual
5 revenue stream and profit off the public record. And we're
6 not talking about a onetime installation or setup fee, like we
7 saw in Arizona. This is six figures annually. And I'm sorry,
8 but it simply cannot be the case that a vendor can attempt to
9 create a revenue stream and profit from the public record and
10 can constitute a legitimate and compelling governmental
11 interest that justifies an access restriction.

12 So then, finally, the opposition papers describe
13 Idaho's current administrative practices in rather great
14 detail, implying that providing more timely access may require
15 them to change one or more of their practices. They talk
16 about filing fees, letting court clerks review documents, all
17 manner of things that all courts deal with, including those
18 that provide timely access without delays.

19 And the point I want to emphasize here is that, yes
20 indeed, some internal administrative procedures may need to
21 change. That is the inevitable result of a policy or practice
22 is found to violate the constitution. And although defendant
23 does not come right out and say this in her opposition papers,
24 the rather clear implication is that preservation of the
25 status quo is itself an overriding interest for which there

Exhibit 8

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

COURTHOUSE NEWS SERVICE,)	
)	
Plaintiff,)	
v.)	
)	
VELVA L. PRICE, in her official)	
capacity as Travis County District Clerk;)	
MEGAN LAVOIE, in her official)	Civil Action No. 20-1260
capacity as Administrative Director of)	
the Texas Office of Court)	
Administration,)	
)	
Defendants.)	
)	

**DECLARATION OF ADAM ANGIONE IN SUPPORT OF
PLAINTIFF COURTHOUSE NEWS SERVICE’S
FIRST AMENDED COMPLAINT**

I, Adam Angione, declare and state as follows:

1. I make this declaration in support of the *First Amended Complaint* filed by Courthouse News Service (“Courthouse News”) in the above entitled action. I have personal knowledge of the following facts and would and could testify to them if called as a witness.

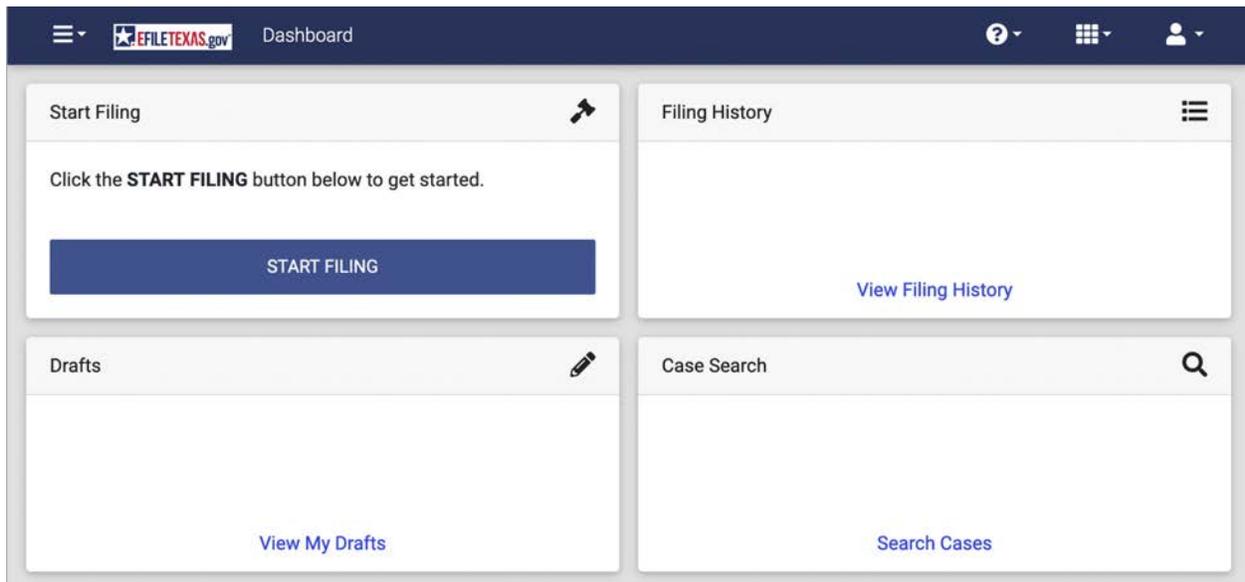
2. I am employed by Courthouse News as a regional bureau chief and special projects editor based in New York. I was directed by Mr. Bill Girdner, Editor and Publisher of Courthouse News, to capture screenshots of the electronic filing (“e-filing”) software interface used by filers to submit and file new civil petitions to the Travis County District Courts. The in-take software is available at www.efiletexas.gov. On March 7, 2022, I logged into the in-take software at this website and personally captured images of the screens presented for an e-filer to complete submission of a new civil petition to the Travis County District Courts. A true and correct copy of the images I captured are attached hereto as Exhibit A.

3. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

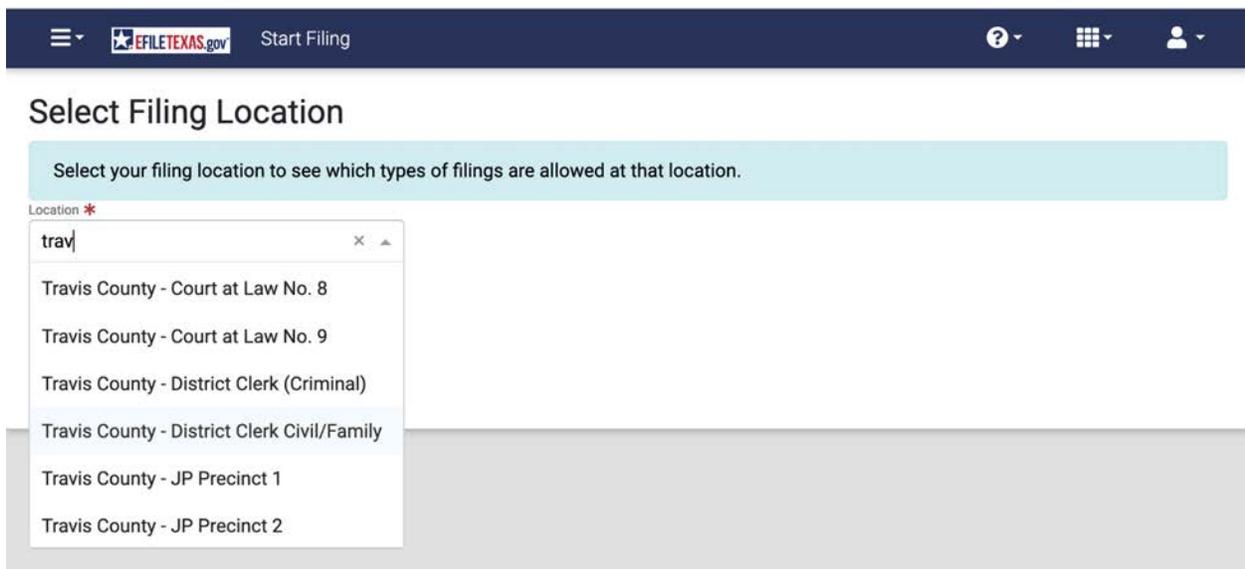
Executed in New York, New York on this 17 day of March, 2022.


ADAM ANGIONE

1. Start at the Dashboard after logging in.



2. Choose the Filing Location (every individual court within every county is listed).



3. Choose Start a New Case.

Select your filing location to see which types of filings are allowed at that location.

Location *
 Travis County - District Clerk Civil/F... x

New Case

Click the **START A NEW CASE** button if:

- * You don't have a case number, and
- * You want to start a new case for the first time.

[Click here](#) for more information.

START A NEW CASE

Existing Case

Click the **FILE INTO EXISTING CASE** button if:

- * The case has already been started with the court by you or someone else, **and**
- * You have the case number or names of the parties to find the case.

[Click here](#) for more information.

FILE INTO EXISTING CASE

4. Upload the Complaint (there's another step later when you choose the complaint to file for this case so this is just a pre-load, as it's described).

Preload Documents - Draft # 970833

Preload Documents > Case > Parties > Filings > Service > Fees > Summary

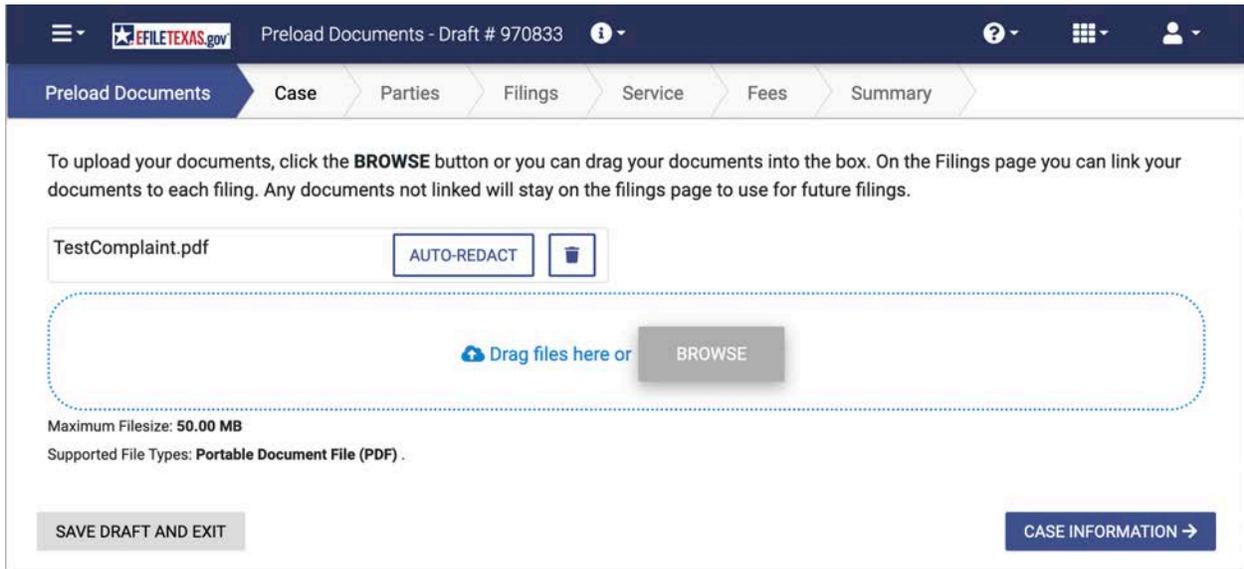
To upload your documents, click the **BROWSE** button or you can drag your documents into the box. On the Filings page you can link your documents to each filing. Any documents not linked will stay on the filings page to use for future filings.

[Drag files here or](#) BROWSE

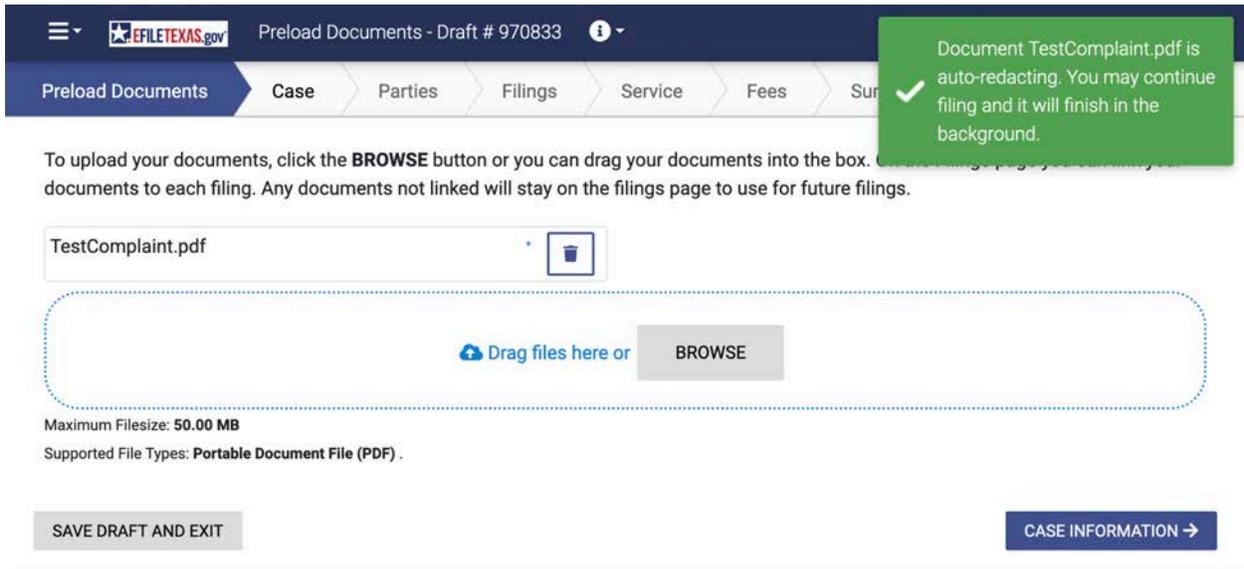
Maximum Filesize: 50.00 MB
 Supported File Types: **Portable Document File (PDF)** .

SAVE DRAFT AND EXIT
CASE INFORMATION →

5. You can choose to have the e-filing software Auto-redact the document.



6. Which I did, and I got this message in green while it was auto-redacting.



7. And this message in green when it was finished.

Preload Documents - Draft # 970833

Redaction is complete for TestComplaint.pdf. Number of items redacted: 0

Preload Documents Case Parties Filings Service Fees Sur

To upload your documents, click the **BROWSE** button or you can drag your documents into the box. On the Filings page you can link your documents to each filing. Any documents not linked will stay on the filings page to use for future filings.

TestComplaint.pdf EDIT REDACTIONS

Drag files here or BROWSE

Maximum Filesize: 50.00 MB
Supported File Types: Portable Document File (PDF)

SAVE DRAFT AND EXIT CASE INFORMATION ->

8. Choose the Case Category.

Case Information - Draft # 970833

- **Category** - the general type of case you are filing (like Family, Probate, or Small Claims)
- **Case Type** - the exact type of case you are filing

If you can't find your Case Type, change the **Case Category** to see other Case Types. To learn more, click [here](#).

Once you have selected the Location, Case Category, and Case Type, click **PARTIES** at the bottom of the page to move to the next section.

Location * Travis County - District Clerk Civil/Family

Case Category * Select...

- Civil - Contract
- Civil - Employment
- Civil - Injury or Damage
- Civil - Other Civil
- Civil - Real Property
- Civil - Related to Criminal Matters
- Civil - Tax
- Family - Marriage Relationship
- Family - Other Family Law
- Family - Parent Child Relationship
- Family - Title IV-D (OAG Use Only)

<- PRELOAD DOCUMENTS SAVE DRAFT AND EXIT PARTIES ->

9. Choose the Case Type within the Category (the list of Case Types changes with each Category chosen).

Case Information - Draft # 970833

Once you have selected the Location, Case Category, and Case Type, click **PARTIES** at the bottom of the page to move to the next section.

Location *
Travis County - District Clerk Civil/Family

Case Category *
Civil - Other Civil

Case Type *
Select...
Administrative Appeal - \$350.00
Code Violations - \$350.00
Communicable Disease - \$350.00
Foreign Judgment - \$350.00
Fraudulent Liens - \$350.00
Garnishment - \$350.00
Intellectual Property - \$350.00
Lawyer Discipline - \$350.00
Other Civil - \$350.00
Other Civil - Court Use Only
Perpetuate Testimony - \$350.00
Securities/Stock - \$350.00
Transfer Structured Settlement Payment Rights - \$350.00

Damage Amount *
Select...
Damage Amount is Required.

← PRELOAD DOCUMENTS SAVE DRAFT AND EXIT PARTIES →

10. If you want to add special Procedures or Remedies, click Select.

Once you have selected the Location, Case Category, and Case Type, click **PARTIES** at the bottom of the page to move to the next section.

Location *
Travis County - District Clerk Civil/Family

Case Category *
Civil - Other Civil

Case Type *
Select...
Case Type is Required.

Procedures / Remedies
SELECT

Damage Amount *
Select...
Damage Amount is Required.

← PRELOAD DOCUMENTS SAVE DRAFT AND EXIT PARTIES →

11. And here are the options.

Select Procedures / Remedies

Select	Procedure / Remedy
<input type="checkbox"/>	Appeal from Municipal or Justice Court
<input type="checkbox"/>	Arbitration-related
<input type="checkbox"/>	Attachment
<input type="checkbox"/>	Bill of Review
<input type="checkbox"/>	Certiorari
<input type="checkbox"/>	Class Action
<input type="checkbox"/>	Declaratory Judgment
<input type="checkbox"/>	Garnishment
<input type="checkbox"/>	Interpleader

If you can't find

Once you have

Location *

Travis Cour

Case Type *

Other Civil

Procedures / Rem

SELECT

← PRELOAD

<input type="checkbox"/>	License
<input type="checkbox"/>	Mandamus
<input type="checkbox"/>	Post-Judgment
<input type="checkbox"/>	Prejudgment Remedy
<input type="checkbox"/>	Protective Order
<input type="checkbox"/>	Receiver
<input type="checkbox"/>	Sequestration
<input type="checkbox"/>	Temporary Restraining Order/Injunction
<input type="checkbox"/>	Turnover

Prejudgment Remedy

CANCEL SAVE

Help

12. Choose the Damage Amount.

Case Information - Draft # 970833

If you can't find your Case Type, change the **Case Category** to see other Case Types. To learn more, click [here](#).

Once you have selected the Location, Case Category, and Case Type, click **PARTIES** at the bottom of the page to move to the next section.

Location *

Travis County - District Clerk Civil/Family

Case Category *

Civil - Other Civil

Case Type *

Other Civil - \$350.00

Procedures / Remedies

SELECT

Damage Amount *

- ✓ Select...
- Monetary relief of \$250,000 or less and non-monetary relief
- Monetary relief over \$1,000,000
- Monetary relief over \$250,000 but not more than \$1,000,000
- Only Monetary relief of \$250,000 or less
- Only non-monetary relief

← PRELOAD DOCUMENTS

SAVE DRAFT AND EXIT

PARTIES →

☰
EFILETEXAS.gov
Case Information - Draft # 970833
?
☰
👤

- Location** - the court where you are filing your case
- Category** - the general type of case you are filing (like Family, Probate, or Small Claims)
- Case Type** - the exact type of case you are filing

If you can't find your Case Type, change the **Case Category** to see other Case Types. To learn more, click [here](#).

Once you have selected the Location, Case Category, and Case Type, click **PARTIES** at the bottom of the page to move to the next section.

Location *

Travis County - District Clerk Civil/Family

Case Category *

Civil - Other Civil

Case Type *

Other Civil - \$350.00

Procedures / Remedies

SELECT

Damage Amount *

Monetary relief over \$1,000,000

← PRELOAD DOCUMENTS

SAVE DRAFT AND EXIT

PARTIES →

Help

13. Add Parties.

☰
EFILETEXAS.gov
Parties - Draft # 970833
?
☰
👤

Preload Documents
Case
Parties
Filings
Service
Fees
Summary

Party Type	Required Party	Party Name	Actions
Plaintiff	This is a required ...	ABC LLC	
Defendant	This is a required ...	DEF Inc.	

+ ADD PARTY

← CASE INFORMATION

SAVE DRAFT AND EXIT

FILINGS →

14. Choose whether to E-file and Serve or just E-file.

The screenshot shows the 'Filing - Draft # 970833' page on EFILETEXAS.gov. The 'Details' tab is active, and the 'Filing Type' dropdown is set to 'eFile Only'. The 'Filing Code' dropdown is currently empty, and a red error message 'Filing Code is Required.' is displayed below it. The instructions for Step 1 are as follows:

Step 1: Pick your Filing Type.

- Pick "Efile Only" if you are only sending your documents to the court.
- Pick 'Efile and Serve' to also provide a copy of your filed documents to the service contacts listed in the next section.
- To learn more about filing types, [click here](#) .

Step 2: Pick the Filing Code from the drop down box that matches the document you are filing. If you aren't sure which filing code to pick, contact the court.

Step 3: Click the "Add Documents" button to add the document for the filing code.

- For more information about adding documents, [click here](#) .
- To learn about lead documents and attachment documents, [click here](#) .

Click the "Add Filing" button and repeat the steps above if you need to add more than one document.

The form includes fields for 'Filing Description', 'Client Reference Number', and 'Firm client re-bill or case tracking #'. A 'Help' button is located in the bottom right corner.

15. Choose the Filing Code.

The screenshot shows the 'Filing - Draft # 970833' page on EFILETEXAS.gov. The 'Filing Type' dropdown is set to 'eFile Only'. The 'Filing Code' dropdown is open, showing a list of options: Application, Petition, Proposed Order, Statement of Inability to Afford Costs, and Transfer (County Use Only). A red error message 'Filing Code is Required.' is displayed below the dropdown. The instructions for Step 2 are as follows:

Step 2: Pick the Filing Code from the drop down box that matches the document you are filing. If you aren't sure which filing code to pick, contact the court.

Step 3: Click the "Add Documents" button to add the document for the filing code.

- For more information about adding documents, [click here](#) .
- To learn about lead documents and attachment documents, [click here](#) .

Click the "Add Filing" button and repeat the steps above if you need to add more than one document.

The form includes fields for 'Filing Description', 'Client Reference Number', and 'Firm client re-bill or case tracking #'. A 'Help' button is located in the bottom right corner.

16. Add any Comments to the Court.

☰  Filings - Draft # 970833 ⓘ ? ☰ 👤

Click the "Add Filing" button and repeat the steps above if you need to add more than one document.

Filing Type * Filing Code *

Filing Description Client Reference Number

Firm client re-bill or case tracking #

Comments to Court

[GO TO OPTIONAL SERVICES](#)

17. Choose any optional services you want.

Filings - Draft # 970833

[Preload Documents](#)
[Case](#)
[Parties](#)
[Filings](#)
[Service](#)
[Fees](#)
[Summary](#)

Filing Code	Client Ref #	Filing Description	Actions																																	
Petition																																				
<div style="display: flex; justify-content: space-between; align-items: center;"> Details Optional Services Communication </div>			Hide Details																																	
<p>The optional services you see below are based on the filing code you picked. These include, but are not limited to, Copy Fees, Service Fees, Sheriff/Marshall/Constable Fees.</p> <p>Click the blue arrow next to the optional service you want to pick to add the optional service. The Multiplier, if required, is the quantity needed.</p> <p>To read more about optional services, click here.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <h3 style="margin: 0;">Not Selected</h3> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="padding: 5px;">Additional Plaintiffs (1001+)</td><td style="padding: 5px; color: #0070c0;">?? x \$150</td><td style="padding: 5px; text-align: center;">→</td></tr> <tr><td style="padding: 5px;">Additional Plaintiffs (101-500)</td><td style="padding: 5px; color: #0070c0;">?? x \$75</td><td style="padding: 5px; text-align: center;">→</td></tr> <tr><td style="padding: 5px;">Additional Plaintiffs (11-25)</td><td style="padding: 5px; color: #0070c0;">?? x \$25</td><td style="padding: 5px; text-align: center;">→</td></tr> <tr><td style="padding: 5px;">Additional Plaintiffs (26-100)</td><td style="padding: 5px; color: #0070c0;">?? x \$50</td><td style="padding: 5px; text-align: center;">→</td></tr> <tr><td style="padding: 5px;">Additional Plaintiffs (501-1000)</td><td style="padding: 5px; color: #0070c0;">?? x \$100</td><td style="padding: 5px; text-align: center;">→</td></tr> <tr><td style="padding: 5px;">Bond Approval Fee</td><td style="padding: 5px; color: #0070c0;">?? x \$4</td><td style="padding: 5px; text-align: center;">→</td></tr> <tr><td style="padding: 5px;">Copies - Certified</td><td style="padding: 5px; color: #0070c0;">?? x \$1</td><td style="padding: 5px; text-align: center;">→</td></tr> <tr><td style="padding: 5px;">Issue Abstract of Judgment</td><td style="padding: 5px; color: #0070c0;">?? x \$8</td><td style="padding: 5px; text-align: center;">→</td></tr> <tr><td style="padding: 5px;">Issue Citation</td><td style="padding: 5px; color: #0070c0;">?? x \$8</td><td style="padding: 5px; text-align: center;">→</td></tr> <tr><td style="padding: 5px;">Issue Citation - Certified Mail</td><td style="padding: 5px; color: #0070c0;">?? x \$8</td><td style="padding: 5px; text-align: center;">→</td></tr> <tr><td style="padding: 5px;">Issue Citation - Insurance Commission</td><td style="padding: 5px; color: #0070c0;">?? x \$12</td><td style="padding: 5px; text-align: center;">→</td></tr> </table> </div> <div style="width: 45%; padding-left: 20px;"> <h3 style="margin: 0;">Selected</h3> </div> </div>				Additional Plaintiffs (1001+)	?? x \$150	→	Additional Plaintiffs (101-500)	?? x \$75	→	Additional Plaintiffs (11-25)	?? x \$25	→	Additional Plaintiffs (26-100)	?? x \$50	→	Additional Plaintiffs (501-1000)	?? x \$100	→	Bond Approval Fee	?? x \$4	→	Copies - Certified	?? x \$1	→	Issue Abstract of Judgment	?? x \$8	→	Issue Citation	?? x \$8	→	Issue Citation - Certified Mail	?? x \$8	→	Issue Citation - Insurance Commission	?? x \$12	→
Additional Plaintiffs (1001+)	?? x \$150	→																																		
Additional Plaintiffs (101-500)	?? x \$75	→																																		
Additional Plaintiffs (11-25)	?? x \$25	→																																		
Additional Plaintiffs (26-100)	?? x \$50	→																																		
Additional Plaintiffs (501-1000)	?? x \$100	→																																		
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Copies - Certified	?? x \$1	→																																		
Issue Abstract of Judgment	?? x \$8	→																																		
Issue Citation	?? x \$8	→																																		
Issue Citation - Certified Mail	?? x \$8	→																																		
Issue Citation - Insurance Commission	?? x \$12	→																																		

Help
Help

Issue Citation - Secretary of State	?? x \$12	→
Issue Citation - State Highway Commission	?? x \$8	→
Issue Expunction - Certified Mail	?? x \$12	→
Issue Expunction - Electronic	?? x	→
Issue Letter Rogatory	?? x \$8	→
Issue Order of Sale	?? x \$8	→
Issue Show Cause	?? x \$8	→
Issue Subpoena	?? x \$8	→
Issue Temporary Restraining Order	?? x \$8	→
Issue Writ	?? x \$8	→
Issue Writ of Attachment	?? x \$8	→
Issue Writ of Execution	?? x \$8	→
Issue Writ of Garnishment	?? x \$12	→
Issue Writ of Sequestration	?? x \$12	→
Issue Writ of Withholding	?? x \$15	→
Jury Fee	?? x	→
Record Search	?? x \$5	→
Service - Certified Mail	?? x \$75	→
Service - Constable - Personal Service	?? x \$80	→

Help

Service - Constable - Subpoena – Less than five days	?? x \$80	→
Service - Constable - Subpoena – More than five days	?? x \$80	→
Service - Constable - Writ - Attachment	?? x \$155	→
Service - Constable - Writ - Garnishment	?? x \$115	→
Service - Constable - Writ - Habeas Corpus	?? x \$115	→
Service - Constable - Writ - Other	?? x \$115	→
Service - Constable - Writ - Sequestration	?? x \$155	→
Service - Constable - Writ - Capias	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 1 - Personal Service	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 1 - Subpoena – Less than five days	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 1 - Subpoena – More than five days	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 1 - Writ - Attachment	?? x \$155	→
ZZ - (COURT USE ONLY) Service - Constable 1 - Writ -	?? x \$115	→

Help

Help

ZZ - (COURT USE ONLY) Service - Constable 1 - Writ - Garnishment ?? x \$115 →

ZZ - (COURT USE ONLY) Service - Constable 1 - Writ - Habeas Corpus ?? x \$115 →

ZZ - (COURT USE ONLY) Service - Constable 1 - Writ - Other ?? x \$115 →

ZZ - (COURT USE ONLY) Service - Constable 1 - Writ - Sequestration ?? x \$155 →

ZZ - (COURT USE ONLY) Service - Constable 2 - Personal Service ?? x \$80 →

Help

ZZ - (COURT USE ONLY) Service - Constable 2 - Subpoena - Less than five days ?? x \$80 →

ZZ - (COURT USE ONLY) Service - Constable 2 - Subpoena - More than five days ?? x \$80 →

ZZ - (COURT USE ONLY) Service - Constable 2 - Writ - Attachment ?? x \$155 →

ZZ - (COURT USE ONLY) Service - Constable 2 - Writ - Capias ?? x \$115 →

ZZ - (COURT USE ONLY) Service - Constable 2 - Writ - Garnishment	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 2 - Writ - Habeas Corpus	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 2 - Writ - Other	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 2 - Writ - Sequestration	?? x \$155	→
ZZ - (COURT USE ONLY) Service - Constable 3 - Personal Service	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 3 - Subpoena – Less than five days	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 3 - Subpoena – More than five days	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 3 - Writ - Attachment	?? x \$155	→
ZZ - (COURT USE ONLY) Service - Constable 3 - Writ - Capias	?? x \$115	→

Help

ZZ - (COURT USE ONLY) Service - Constable 3 - Writ - Garnishment	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 3 - Writ - Habeas Corpus	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 3 - Writ - Other	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 3 - Writ - Sequestration	?? x \$155	→
ZZ - (COURT USE ONLY) Service - Constable 4 - Personal Service	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 4 - Subpoena - Less than five days	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 4 - Subpoena - More than five days	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 4 - Writ - Attachment	?? x \$155	→
ZZ - (COURT USE ONLY) Service - Constable 4 - Writ - Capias	?? x \$115	→

[Help](#)

ZZ - (COURT USE ONLY) Service - Constable 4 - Writ - Garnishment	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 4 - Writ - Habeas Corpus	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 4 - Writ - Other	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 4 - Writ - Sequestration	?? x \$155	→
ZZ - (COURT USE ONLY) Service - Constable 5 - Personal Service	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 5 - Subpoena – Less than five days	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 5 - Subpoena – More than five days	?? x \$80	→
ZZ - (COURT USE ONLY) Service - Constable 5 - Writ - Attachment	?? x \$155	→
ZZ - (COURT USE ONLY) Service - Constable 5 - Writ - Capias	?? x \$115	→

[Help](#)

ZZ - (COURT USE ONLY) Service - Constable 5 - Writ - Garnishment	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 5 - Writ - Habeas Corpus	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 5 - Writ - Other	?? x \$115	→
ZZ - (COURT USE ONLY) Service - Constable 5 - Writ - Sequestration	?? x \$155	→

GO TO COMMUNICATION

Help

18. Add the lead document, in the is case the Complaint.

Lead Document - the main document for the **Filing Code** you picked. The court file stamps this document.

Attachments (only available for some courts) - documents that support the Lead Document (like receipts or exhibits). The court **does not** file stamp Attachments.

To learn how to add more than one Lead Document, click [here](#).

To learn more about Lead Documents or Attachments, click [here](#).

Security: Most court documents are public (non-confidential) even though they contain personal information that you may like to keep private. You may need a court order to be able to select confidential. Please speak to court staff before selecting confidential because your filing may be rejected.

Not Selected

Selected

← TestComplaint.pdf

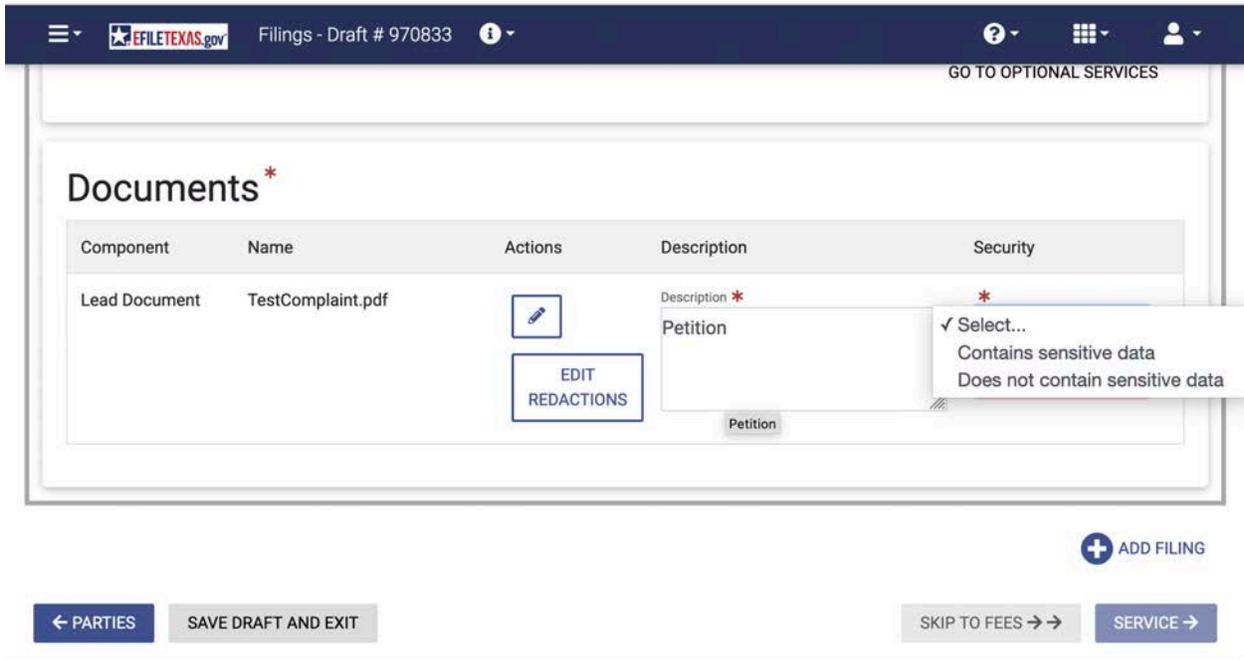
📁 Drag files here or BROWSE

Maximum Filesize: **36.70 MB**
Supported File Types: **Portable Document File (PDF)** .

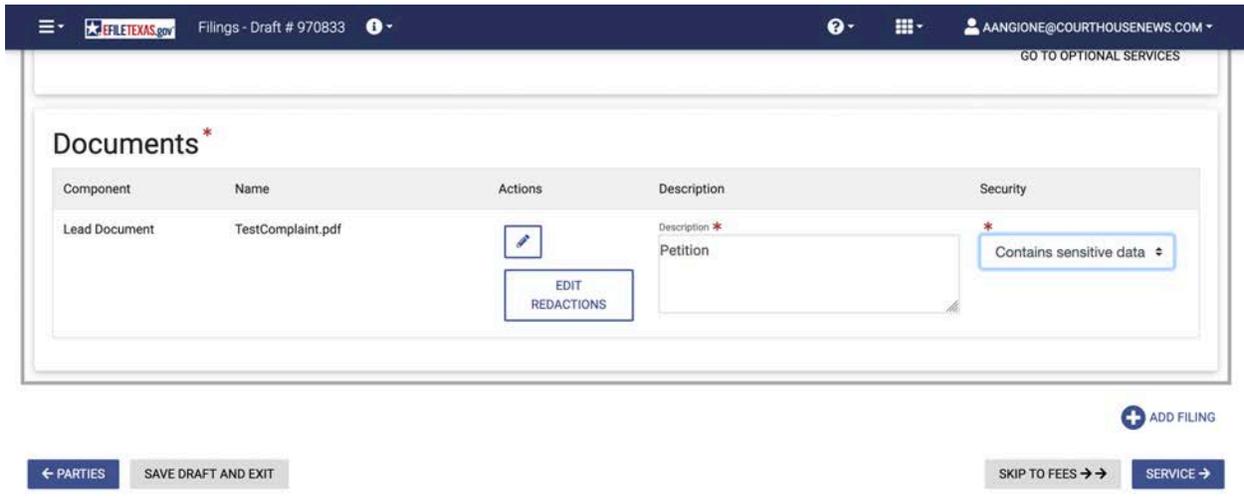
CANCEL
SAVE
 Help

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19. Then a Security designation pops up. Choose Contains sensitive data or Does not contain sensitive data.



20. There are no different options for Contains sensitive data vs. Does not contain sensitive data. (Note: You can Edit the Auto-Redactions that were done in step 5 above.)



EFILE TEXAS.gov Filings - Draft # 970833 AANGIONE@COURTHOUSENEWS.COM

GO TO OPTIONAL SERVICES

Documents*

Component	Name	Actions	Description	Security
Lead Document	TestComplaint.pdf	 EDIT REDACTIONS	Description* Petition	* Does not contain sensit

+ ADD FILING

← PARTIES SAVE DRAFT AND EXIT SKIP TO FEES → → SERVICE →

21. Add Service.

EFILE TEXAS.gov Service - Draft # 970833 AANGIONE@COURTHOUSENEWS.COM

Add Service Contacts:

Parties		Service Contacts	
Type: Plaintiff	Name: ABC LLC	Name	Email/Mail
		No service contacts	
Type: Defendant	Name: DEF Inc.	Name	Email/Mail
		No service contacts	
Type: NA	Name: Other Service Contacts	Name	Email/Mail
		No service contacts	

← FILINGS SAVE DRAFT AND EXIT FEES →

22. Add a Payment Account.


Fees - Draft # 970833
AANGIONE@COURTHOUSENEWS.COM

Click the Calculate Fees button to see the total fees or click the Summary button to review the envelope, including the fees. A hold will be placed on your account for the amount listed, but you will not be charged until your filing is accepted.

Use Existing Payment Account
 Create New Payment Account

Payment Account *
 CNSx Credit Card

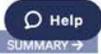
Party Responsible for Fees *
 Select... SEARCH

Party Responsible for Fees is Required.

Filer Type *
 Not Applicable



← SERVICE
SAVE DRAFT AND EXIT





23. Choose the party responsible for payment.


Fees - Draft # 970833
AANGIONE@COURTHOUSENEWS.COM

Click the Calculate Fees button to see the total fees or click the Summary button to review the envelope, including the fees. A hold will be placed on your account for the amount listed, but you will not be charged until your filing is accepted.

Use Existing Payment Account
 Create New Payment Account

Payment Account *
 CNSx Credit Card

Party Responsible for Fees *
 ✓ Select... SEARCH
 ABC LLC
 DEF Inc.

Filer Type *
 Not Applicable



← SERVICE
SAVE DRAFT AND EXIT





24. I'm not sure what the Filer Type is but the only choice I get is Not Applicable.

Click the Calculate Fees button to see the total fees or click the Summary button to review the envelope, including the fees. A hold will be placed on your account for the amount listed, but you will not be charged until your filing is accepted.

Use Existing Payment Account Create New Payment Account

Payment Account *
 CNSx Credit Card

Party Responsible for Fees *
 ABC LLC SEARCH

Select...
 Not Applicable

CALCULATE FEES

← SERVICE SAVE DRAFT AND EXIT SUMMARY → Help

25. Click on Calculate Fees and the itemized amount is shown.

You must pick a Payment Account even if there are no fees. If you cannot pick a payment account from the dropdown, [click here](#) to learn how to add one and pick up where you left off.

If you are using a fee waiver, pick the Waiver Account.

* If you are requesting a fee waiver for the first time, [click here](#) to read how to add a waiver account.

* If you are requesting a Waiver for the first time, or your old Waiver request has expired, make sure to contact the court you are filing into to check that you are approved to use a Waiver. If you incorrectly use a Waiver account, your filing may be rejected.

The Party Responsible for Fees is usually the party the documents are filed for.

Click the Calculate Fees button to see the total fees or click the Summary button to review the envelope, including the fees. A hold will be placed on your account for the amount listed, but you will not be charged until your filing is accepted.

Use Existing Payment Account Create New Payment Account

Category	Item	Amount
Other Civil	Case Initiation Fee	\$350.00
	Subtotal	\$350.00
Service Fees	Convenience Fee	\$10.12
	Subtotal	\$10.12
Grand Total		\$360.12

26. View the Summary and then submit.

EFILETEXAS.gov
Summary - Draft # 970833
AANGIONE@COURTHOUSENEWS.COM

Preload Documents Case Parties Filings Service Fees Summary

Case

Location Travis County - District Clerk Civil/Family	Category Civil - Other Civil	Type Other Civil
Damage Amount Monetary relief over \$1,000,000		

Parties

Count: 2 Show All

Filings

Filing Type	Filing Code	Client Ref #	Filing Description
eFile Only	Petition		
Component Lead Document	Document Name TestComplaint.pdf	Description Petition	Security Does not contain sensitive data
Download Version Unredacted	Actions EDIT REDACTIONS		

Service

Count: 0
None

Fees

Payment Account CNSx	Party Responsible for Fees ABC LLC	Filer Type Not Applicable
-------------------------	---------------------------------------	------------------------------

Other Civil		^
Case Initiation Fee	\$350.00	
	Subtotal	\$350.00
Service Fees		^
Convenience Fee	\$10.12	
	Subtotal	\$10.12
	Grand Total	\$360.12

Agreements

Case

Parties

Filings

Service

Fees

[SUBMIT](#)

[< FEES](#)
[SAVE DRAFT AND EXIT](#)

[SUBMIT](#)

[BACK TO TOP](#)
[Help](#)

Exhibit 9



Search Electronic filing

[eFile](#) / Electronic Filing

How to eFile

- ★ What Filing Code do I use?
 - Understanding the eFile website
 - How do I start a new case?
 - What is the Case Information section?
 - What is the Party Information section?
 - How do I file into an existing case?

[See all 27 articles](#)

Filing Status

- Who reviews and accepts or rejects the filings?
- How do I correct / fix a rejected or canceled envelope?
- How can I see my filings?
How can I check the status of filings that I have submitted?
- What are the different kinds of statuses on the eFile website, what do they mean?
- What happens after I click on Submit?
- Why was my filing rejected or returned?

See all 23 articles

Payment

- How to add a Payment account.
- How do you add a Waiver account?
- What happens to the fees if my filing is Rejected, Cancelled, or Submission Failed?
- What are these charges on my credit card - bank statement?
- How do I delete or remove a payment account?
- What is the convenience payment service fee?

See all 16 articles

Account Management

- I forgot my password/ My Account is Locked / I am unable sign in

Electronic Service

- What is a Service Contact?
- Adding a Service Contact email to a Case
- How do I electronically serve my filings through the website?
- How can I view the Service Contacts on a Case?
- How to remove a Service Contact?
- I started a filing, how do I add my service contact email for electronic service?

See all 24 articles

Errors

- I get a 403 forbidden error when I go to the eFile website.

- How to Reset a Firm User's Password as a Firm Admin
- How to change my password while signed in
- Why is "Firm Admin" greyed out?
- How do I add more Users to the Firm Account?
- How does a new user get approved?

See all 23 articles

- Error when adding a Payment Account
- Recommended PDF format to prevent website errors.
- Can I use my mobile device to access this website?
- Troubleshooting website errors - Clear Cache Files and Cookies Instructions
- I am unable to save changes. A message appears under Description showing the words "Field is invalid". How do I fix this?

See all 9 articles

Products

eFile
re:Search
Guide & File
Online Dispute Resolution

Resources

Legal Professionals
Filers without lawyers
Internal Use only

Help centers

eFile
re:Search
Guide & File
Online Dispute Resolution
eFile and Serve Cloud

Contact

 [Contact us](#)

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[Help](#)

Exhibit 10

- **Document Access** – Document Access is the system that provides access to a repository of documents and associated metadata, and enables users to search for documents, view associated filing data, and view documents. The current system allows each clerk to decide the model for implementation as follows:
 - Repository Model - Document Access stores a copy of all accepted eFilings and metadata for users to search; or
 - Integrated Model – Document Access stores a copy of all accepted eFiling metadata and metadata uploaded from the local CMS. Documents are stored in the local CMS and are requested real-time via an API. There are currently 9 courts using the Integrated Model of document access.

The current eFileTexas technical architecture is depicted in the conceptual model included in the figure below.

Figure 2: Current State Conceptual Model

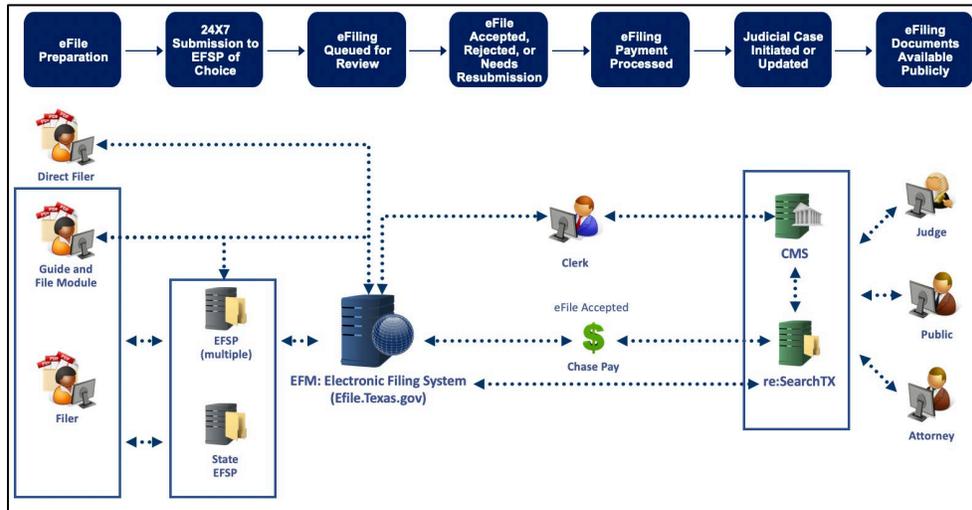


Table 11: Existing Software in Scope for eFileTexas 2.0

Existing Software Items	Description
Tyler Odyssey File and Serve	<ul style="list-style-type: none"> • System that accepts electronic documents from filers via EFSPs and direct integrations, and securely distributes these documents to the appropriate clerk for a justice, county, district or appellate court where they can be accepted into the case management system of that court. (This system is proprietary to Tyler Technologies, Inc.). • The current system provides several capabilities. Key highlights include: <ul style="list-style-type: none"> ○ Integration with a State-sponsored electronic filing service provider as well as additional third party, private EFSP companies;

Exhibit 11

Exhibit 12

From: Minney, Nina <Nina.Minney@tylertech.com>
Sent: Tue 4/20/2021 12:13 PM (GMT-08:00)
To: Bill Girdner <bgirdner@courthousenews.com>
Cc: Media Team <media.team@tylertech.com>
Bcc:
Subject: RE: No correction required: "The Public Record v. The Money"
Attachments: Press Review Queue backgrounder FINAL 2021-04-19.docx

Hi, Bill,

Thank you for getting back to us. With regard to your questions about revenues from our re:Search product, I have verified that we do not disclose product-level revenues as part of our financial reporting or through our client agreements.

To your request for background on the press review queue feature of Odyssey File & Serve, I have attached a brief product overview.

Kind regards,

Nina Minney
Public Affairs Lead
P: 972.713.3770 ext: 113752
C: 415.990.2450

www.tylertech.com

From: Bill Girdner <bgirdner@courthousenews.com>
Sent: Monday, April 5, 2021 2:32 PM
To: Minney, Nina <Nina.Minney@tylertech.com>
Cc: Media Team <media.team@tylertech.com>
Subject: No correction required: "The Public Record v. The Money"

Hi Nina

Well, if you had wanted to open an avenue of communication, paraphrasing my comments inaccurately was not the way to go about it. What I said was that I had reported accurately. I have also reported clearly. To continue being clear, I will continue commenting and reporting just as I have done.

Now, I would like to see those numbers. And it seems you should be able to provide them. Please provide Tyler's gross income figures from the re:search systems. Your company is after all publicly traded. How about at least making an effort.

That would greatly "assist [me] in my reporting."

And regarding your offer to provide background on products, I would appreciate any background material you can provide on the "press review queue" functionality offered by Tyler. That too would greatly assist me in my reporting.

And finally, I also said that Tyler folks are misrepresenting the press review queue functionality, so perhaps you could provide your own sales department with some "background and clarification" on how effective the press queues have been in providing access to court records under the First Amendment.

Thank you,

Bill

From: Minney, Nina <Nina.Minney@tylertech.com>
Sent: Monday, April 5, 2021 10:59 AM
To: Bill Girdner <bgirdner@courthousenews.com>
Cc: Media Team <media.team@tylertech.com>
Subject: RE: Correction request: "The Public Record v. The Money"

Hi, Bill,

We appreciate your commitment to fair and accurate reporting and your offer to try presenting the facts of this story more clearly.

I am not able to provide the additional data you requested, but I am working on finalizing an Odyssey File & Serve media backgrounder which I should be able to share with you very soon. Hopefully you will find it useful.

In the meantime, we are happy to provide any background and clarification on our company and products to assist you with your reporting.

Thank you,

Nina Minney
Public Affairs Team Lead
P: 972.713.3770 ext: 113752
C: 415.990.2450

www.tylertech.com

From: Bill Girdner <bgirdner@courthousenews.com>
Sent: Monday, April 5, 2021 12:19 PM
To: Minney, Nina <Nina.Minney@tylertech.com>
Subject: RE: Correction request: "The Public Record v. The Money"

Hi Nina

I think the sentence is accurate. The local courts do keep the copy fees, as I have said and you have said. And Tyler does keep the fees from searches, as I have said and you have said.

It is true that the basic search is free, but that does not make the sentence inaccurate. I will see, though, if there is a better way to phrase things.

So, can you tell me how much income Tyler earns from the re:search sites, including payments from courts and the "premium features" you mention. That is a number I would like to include in our reporting.

I will also feel free to come back your way when Tyler folks say inaccurate stuff about the press review queues, which is now happening on a regular basis.

Thanks,

Bill

From: Minney, Nina <Nina.Minney@tylertech.com>
Sent: Monday, April 5, 2021 7:48 AM
To: Bill Girdner <bgirdner@courthousenews.com>
Cc: Media Team <media.team@tylertech.com>
Subject: Correction request: "The Public Record v. The Money"

Dear Bill,

Thank you for your ongoing interest in Tyler Technologies. With regard to your April 1 story titled "The Public Record v. The Money," we request the following correction:

Current:

Local courts keep copy fees from a statewide database of court records — so they like the discretionary money — and Tyler keeps all fees related to searches of the record, opening a new market for the giant public contractor.

Proposed:

Most local courts allow the public to search court documents free of charge but collect fees for copies of statewide court records. Tyler offers courts a separate case document tool that lets people conduct consolidated searches throughout every county in states that use Tyler's electronic filing solution, instead of having to search county by county. With this tool, the basic search function is free, and Tyler collects revenues for premium features such as the ability to search text within documents or save searches.

Our media team is glad to assist you by providing accurate, up-to-date information about our company and our products. Thank you, and please let us know if you have any questions or need further clarification.

Regards,

Nina Minney
Public Affairs Team Lead
Tyler Technologies, Inc.

P: 972.713.3770 ext: 113752

C: 415.990.2450

www.tylertech.com



Exhibit 13

Updated 4/19/21



Odyssey File & Serve: Press Review Queue

Product Statement

The press review queue is an optional feature available for purchase as an addition to Tyler's Odyssey File & Serve electronic filing solution.

Press review queue functionality includes:

- Allowing registered electronic filing users with a pre-designated press reviewer role to access court documents via a designated web page as soon as the documents are electronically filed.
- No indication of whether the filing has been accepted or rejected by the court clerk.

The costs involved in operating and maintaining this feature include installation, configuration, software updates, testing, server capacity, and ongoing support and maintenance.

Other tools and features available for purchase in conjunction with Odyssey File & Serve include payment processing, mail service, redaction, and the re:Search case document search portal.



Exhibit 14

Press Review Tool Frequently Asked Questions

For Tyler partners who have implemented Odyssey File & Serve™, accompanying functionality exists that allows your clerks to make e-filed materials immediately available to the press. The decision of whether to implement this functionality, known as the Press Review tool, rests with each of our partners. For additional information on the Press Review tool, please see the frequently asked questions below.

What is the Press Review tool?

The Press Review tool allows registered users to access court documents and records via a web-based online tool. Access is available in nearly real-time from filing. As such, registered users have access to filings before they have been reviewed and officially “accepted” by the clerk according to the applicable filing review process in place at a given court.

The Press Review tool is an optional feature that is available as an add-on to File & Serve. The solution operates independently from other Tyler online public access solutions such as re:Search™ and Odyssey Portal.

How is the Press Review tool configured?

The Press Review tool can be configured to store certain documents and records based upon the business processes defined by the court. Current configuration options include:

- **Case Type Codes** — (Optional) This a list of case type codes that should be included in the Press Review tool.
- **Days** — (Optional) This is the number of days documents should be included. Documents that are older than this date will be omitted from the Press Review tool.
- **Filing States** — (Optional) This is a list of filing states that are to be included. Any filing not in one of these states will be omitted from the Press Review tool. (ex. Submitted, Under Review, etc.)
- **Security Groups to Omit** — (Optional) This is a list of case security group codes that are to be omitted. Any filing linked to a case with one of these security groups will be omitted from the Press Review tool.
- **Document Types to Omit** — (Optional) This is a list of document type codes that are to be omitted from the Press Review tool.

...continued on back

What is required to implement the Press Review tool?

Although the Press Review tool is a supplement to File & Serve, it does require unique infrastructure, services, and contract terms. For example, additional infrastructure is required to ensure system-wide performance levels of File & Serve remain optimal.

Additional solution validation and testing is needed to ensure the information being surfaced to authorized users is consistent with the court's configuration settings. Finally, specific contract terms are required to memorialize a shared understanding that the Press Review tool allows courts to provide access to documents that are electronically submitted, prior to clerk review, thereby eliminating the clerk's ability to identify documents which may have been filed incorrectly or surfaced to unauthorized recipients. More specifically, Tyler requires updates to the parties' electronic filing contract and the Terms of Service for File & Serve users along with new Terms of Service for Press Review tool users.

How is this tool configured for users?

Although configuration may vary, a new user is typically created to grant specific access to this Press Review tool. Only users with the appropriate credentials and privileges can log into the solution and see the filings available based on the configuration set for that location. Any users without the correct security privilege (role) will receive a message upon login that they do not have access.

How can users access the Press Review tool?

There is no link to the Press Review tool from within the Odyssey File & Serve application. It can only be accessed through a distinct URL which is given to the court at the time the environment is established and configured.

The tool uses the same login credentials and session information as Odyssey File & Serve, so if a user is already signed into Odyssey File & Serve, the Press Review tool will use that user's login to determine whether to grant or deny access. If not signed in, the user will be presented with a sign-in screen. Signing into, or out of, the Press Review tool also signs the user into or out of Odyssey File & Serve and vice versa.

If you would like additional information about the Press Review tool, including a cost proposal, please contact your Tyler representative.

Exhibit 15

Administrative Office of the Courts

Supreme Court of New Mexico

Arthur W. Pepin, Director



237 Don Gaspar, Room 25
Santa Fe, NM 87501
(505) 827-4802
(505) 827-4824 (fax)

MEMORANDUM

TO: Chief Justice Judith Nakamura, Justice Petra Jimenez Maes, Justice Barbara Vigil, Justice Charles Daniels, and Justice Gary L. Clingman
FROM: Artie Pepin
DATE: November 30, 2018
RE: COURTHOUSE NEWS SERVICE REQUEST FOR ACCESS TO COURT FILINGS

On Wednesday, November 26, 2018, Chief Justice Nakamura received a letter from Bill Girdner, Editor for Courthouse News Service (CNS) requesting that New Mexico courts establish a “press queue” to provide immediate access “to newly efiled complaints and subsequent filings upon receipt, at the same time as the filing.” A copy of the letter is attached as **A**. CNS wants to get copied on everything submitted for e-filing before it is entered in a court queue and reviewed by the court to be accepted or rejected. Among possible responses to the letter are (1) the requested access will be granted as soon as we can arrange for Tyler to install the press queue, or (2) no. If the latter it seems very likely CNS will soon litigate the matter in federal court.

Litigation Addressing the CNS Claim to a Constitutional Right to Immediate Access to Documents Sent to a Court for Electronic Filing

Litigation in California and Illinois makes it clear that CNS places a high monetary value on immediate access to pleadings even before they are accepted by a court and without waiting until the court accepts the filing. I did not research the issue fully and there may be other cases. In a California case that has gone to the Ninth

Circuit and back to district court at least twice, *CNS v. Planet*, CV-08083 SJO (2016 WL 4157354), and recently in the Northern District of Illinois, *CNS v. Brown*, 17C 7933 (2018 WL 318485), CNS argued it has a constitutional right to access when a document is presented to the court electronically to be filed.

The Conference of Chief Justices filed an amicus curiae brief in *CNS v. Planet*, Nos. 16-55977 and 16-56714 (9th Cir., May 1, 2017). The Table of Contents states the arguments are “I. Access to Pre-Judgment Court Records in Civil Cases Is Not Compelled by the First Amendment” and “II. Creating a *Constitutional* Right to Immediate Or Even Same-Day Access to Pre-Judgment Court Records Would Trammel Existing, Well-Recognized Rights of Litigants and Unduly Burden the State Courts in the Performance of Their Duties.”¹ I did not track down the ultimate outcome of *Planet* but I did confirm that California courts that use Odyssey had Tyler install a press queue for CNS so the matter may have been settled. Attached at **B** is a string of email responses (some of which linked to more detailed replies) from states in response to a series of questions I sent as COSCA President to State court Administrators in October 2016 to provide court data in support of the CCJ amicus brief. They detail how these states provided media access to filings two years ago and what issues or challenges it would pose if their courts had to provide immediate, same-day access to the press.

A recent opinion in *CNS v. Brown*, No. 18-1230 (7th Cir., November 13, 2018) reversed the district court’s grant of an injunction and dismissed the case under the abstention doctrine articulated in *Younger v. Harris*, 401 U.S.37 (1971). The Seventh Circuit held that the CNS claims had to be litigated in state court first although the court recognized that this created a conflict with the Ninth circuit’s ruling in *Planet* which rejected abstention and remanded for additional litigation on the merits. *Brown* at page 26, note 6.² Although the court did not reach the merits of the CNS claims, the opinion discusses reasons why the type of immediate access requested by CNS might not be constitutionally required.

¹ Without agreeing to a paid, private subscription I am unable to download or print the brief due to limitations in our Westlaw account. I can get the brief from its author but have not done so. A link to the brief that allows it to be read online is at:
<https://www.scribd.com/document/348182457/CNS-v-Planet-Chief-Justices-Conference-Amicus-Brief>

² I am also unable to obtain this opinion through Westlaw although I have a printed copy that can be provided to the Court in print or electronically.

CNS Actions before the Odyssey Access Subcommittee

Mr. Girdner from CNS sent a letter dated July 26, 2016, to the Odyssey Access Subcommittee (OAS) of JIFFY making a request similar to the one in his recent letter to Chief Justice Nakamura. It is attached as **C**. Attorney Pat Rogers appeared before OAS at its September 15, 2016 meeting resulting in an invitation to return for the meeting on October 19, 2016, as stated in the email attached as **D**. Minutes from the October meeting, attached as **E**, reflect a discussion of the CNS request with Mr. Rogers. Also attached as **F** is an email marked "confidential" dated October 26, 2016, stating CEO Jim Noel's opposition to a CNS request for immediate electronic access at the Second Judicial District Court and from Colleen Reilly at Tyler confirming they did build an access portal for CNS in Clark County, Nevada and in Georgia at no cost to the courts.

I am searching for any additional correspondence between OAS and CNS or relevant OAS minutes. I will provide them as soon as I have any such documents. I attended some but not all of the OAS meetings that included CNS. I believe OAS eventually denied the CNS request. Senior Justice Maes attend the OAS meetings more regularly than I and may have been present for additional discussions of the CNS request. She may recall other OAS discussions or actions in this matter.

Response to CNS Letter

The email from Mr. Noel (attachment **F**) reports a CNS threat to litigate its right of access in federal court. CNS has done so in California and Illinois and perhaps in other cases. I confirmed that Nevada, Georgia, and California have had Tyler install at no cost to the courts a press queue as Mr. Girdner requests of New Mexico. Two options for responding to the CNS letter are to have Tyler install the press queue or deny the request and await litigation in federal court.

Exhibit 16



Eighth Judicial District Court

INFORMATION TECHNOLOGY DIVISION



Effective March 4, 2019 for the Eighth Judicial District Court:

Pursuant to [Rule 8\(a\)](#) of the Nevada Supreme Court Electronic Filing Rules all Electronic Filings shall be automatically accepted (filed into the Case Management System) and simultaneously served at the time of submission, except for the filings defined [here](#). Once an envelope has been submitted, it cannot be cancelled by the filer.

For new Family Court filings, please allow the Court 24 hours to provide notice of any change in case assignment in compliance with EDCR 5.103.

If you wish to remove yourself from service on a case and are unable to, please contact Tyler Technologies at Efiling.Support@TylerTech.com with this [form](#).

Please refer back to the Court News with policy changes and answers to frequently asked questions.

Please Note:

Documents filed that require a hearing will no longer be returned with the hearing date stamped on the document. The filing will be auto-accepted and a "Clerk's Notice of Hearing" will be E-Filed and Served on all parties registered for service for the case once a hearing date has been set.

Exhibit 17

From: Creelman, Cassie <creec@clarkcountycourts.us>
Sent: Monday, April 13, 2020 2:26 PM
To: CNS Chris Marshall <cmarshall@Courthousenews.com>
Subject: RE: Question About Auto-Accept System

Hi Chris,

Yes it's working although it takes a long time to load so we've still got an active work order with the vendor. I'm not sure I understand your question below. Portal is the system that provides online access to cases, and the auto-accept policy was mandated by the NV Supreme Court where we modified the e-File system to accept filings automatically rather than have a clerk review prior to accept.

Both e-Filing (File and Serve) and Portal are Tyler Technologies systems.

Cassie Creelman
702.671.4455

From: CNS Chris Marshall [<mailto:cmarshall@Courthousenews.com>]
Sent: Monday, April 13, 2020 2:21 PM
To: Creelman, Cassie
Cc: CNS Chris Marshall
Subject: Question About Auto-Accept System

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Cassie,

I hope you are doing well during these trying times. I noticed the press queue is working again. That's great. My editor asked me to ask you if the auto-accept system used to provide public access to new cases was implemented by Tyler Technologies or if a different vendor was involved somewhere in the process. If a different vendor, can you tell me the name and what sort of role they played?

Thanks in advance.

Best,
Chris Marshall
CNS Western Bureau Chief
(925) 471-0168

Exhibit 18

**SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR**

PATRICIA GABEL, ESQ.
State Court Administrator
patricia.gabel@vermont.gov



www.vermontjudiciary.org

Mailing Address
Office of the Court Administrator
109 State Street
Montpelier, VT 05609-0701

Telephone (802) 828-3278
FAX: 802 828-3457

TO: Members of the Vermont Bar
FROM: Patricia Gabel, Esq., State Court Administrator
RE: Clerk Review of Electronic Initial Civil Complaints
DATE: December 9, 2021

To ensure you continue to receive these emails, please add JUD.AttyLicensing@vermont.gov and JUD.CAOMemotoBar@vermont.gov to your Safe Senders list.

Beginning on Friday, December 10, 2021, initial civil complaints that are submitted using the Odyssey File and Serve code "initial filing" will be automatically entered in the Judiciary's electronic case management system without prior staff review and acceptance. Previously, all electronic filings, including initial complaints and associated documents in such cases, were reviewed by staff before being entered into the electronic case management system. Some initial civil complaints are excepted from automatic entry, including those in small claims actions, stalking/sexual assault actions, and those within the original jurisdiction of the Supreme Court, or within the jurisdiction of criminal division, family division, environmental division, probate division, or the judicial bureau.

This change means that documents and information designated by the electronic filer as public that are part of the initial filing will be immediately viewable to the public on courthouse public access terminals and on the Public Portal website for users with elevated access roles.

Documents submitted under other filing codes in the same envelope or in other envelopes will continue to be reviewed and manually accepted by staff prior to being entered into the electronic case management system.

Pursuant to Rules 7(a)(3) and (4) of the Vermont Rules for Public Access to Court Records, court staff will review all initial complaints after they are entered into the system for the presence of nonpublic information that should not be publicly viewable. As with all cases under the present rules in which this screening reveals that nonpublic documents or information are part of the initial filing, court staff will take action to protect such information from public view and will send notice to the efiler to let them know what corrective actions are needed to fix defects on the filing.

Exhibit 19

- **Document Access** – Document Access is the system that provides access to a repository of documents and associated metadata, and enables users to search for documents, view associated filing data, and view documents. The current system allows each clerk to decide the model for implementation as follows:
 - Repository Model - Document Access stores a copy of all accepted eFilings and metadata for users to search; or
 - Integrated Model – Document Access stores a copy of all accepted eFiling metadata and metadata uploaded from the local CMS. Documents are stored in the local CMS and are requested real-time via an API. There are currently 9 courts using the Integrated Model of document access.

The current eFileTexas technical architecture is depicted in the conceptual model included in the figure below.

Figure 2: Current State Conceptual Model

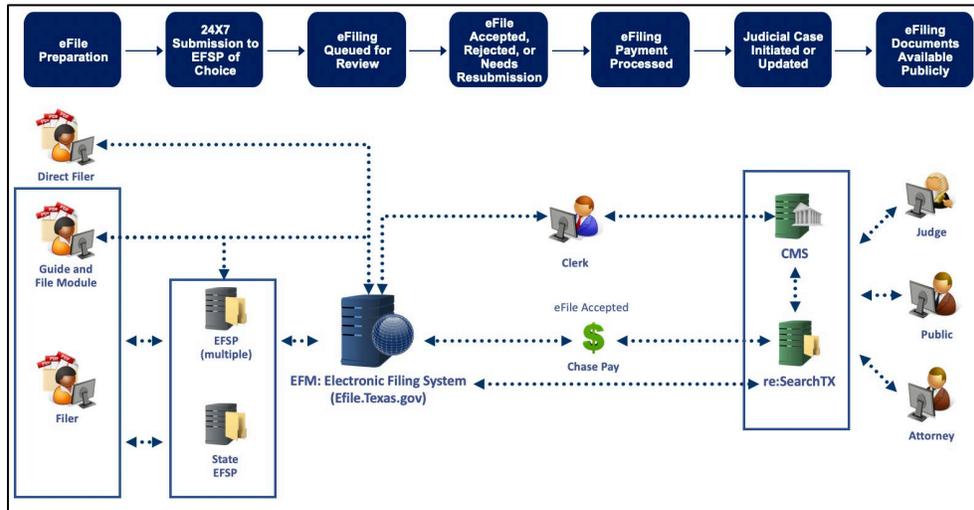


Table 11: Existing Software in Scope for eFileTexas 2.0

Existing Software Items	Description
Tyler Odyssey File and Serve	<ul style="list-style-type: none"> • System that accepts electronic documents from filers via EFSPs and direct integrations, and securely distributes these documents to the appropriate clerk for a justice, county, district or appellate court where they can be accepted into the case management system of that court. (This system is proprietary to Tyler Technologies, Inc.). • The current system provides several capabilities. Key highlights include: <ul style="list-style-type: none"> ○ Integration with a State-sponsored electronic filing service provider as well as additional third party, private EFSP companies;

Exhibit 20

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 COURTHOUSE NEWS SERVICE,
4
5 Plaintiff,

5 v. 16 Civ. 8742 (ER)

6 MILTON TINGLING,
7
8 Defendant.
-----x

Argument

New York, N.Y.
December 16, 2016
3:00 p.m.

9
10 Before:

11 HON. EDGARDO RAMOS
12
13 District Judge

14
15 APPEARANCES

16
17 BRYAN CAVE LLP
18 Attorneys for Plaintiff
19 BY: WILLIAM J. HIBSHER
20 JACQUELYN N. SCHELL
DANIEL H. LEWKOWICZ

21 LEE A. ADLERSTEIN
22 Attorney for Defendant
23
24
25

1 (Case called)

2 THE COURT: Good afternoon. Everyone can be seated.

3 This matter is on for a show cause hearing for
4 preliminary injunction brought by Courthouse News Service
5 seeking to enjoin the clerk of the court of the New York State
6 Supreme Court, New York County, from essentially withholding
7 newly filed complaints while certain administrative tasks are
8 conducted.

9 We will begin with you, Mr. Hibsher. You can remain
10 seated if you wish. If you have a microphone, speak directly
11 into the microphone. Or you can stand, as you wish.

12 MR. HIBSHER: Thank you, your Honor. Your Honor,
13 Courthouse News Service reports on civil cases filed in federal
14 and state courts throughout the country. With the Court's
15 permission, I would like to reserve some rebuttal time for
16 after my adversary speaks.

17 THE COURT: Sure.

18 MR. HIBSHER: Thank you.

19 Until the advent of electronic filing in the New York
20 State courts, CNS had access to nearly all civil complaints by
21 the end of each day on which they were filed. But with
22 e-filing, perhaps counterintuitively, there are now substantial
23 delays in access to newly filed cases in New York supreme. New
24 York supreme is one of the country's most prolific and most
25 important courts. On average, CNS sees less than two-thirds of

1 the cases filed. One out of three cases filed each day are
2 withheld from CNS and from the public. Often the delay is
3 greater than one day.

4 THE COURT: Is it ever greater than one day if it's a
5 regular workday, not a weekend or a holiday?

6 MR. HIBSHER: Yes, your Honor. The sampling that we
7 provided in both the complaint and in the Angione affidavits
8 lists the numbers of complaints that are produced on the same
9 day. Then there is a second column in paragraph 24 of the
10 Angione affidavit which says one-day delay, and then a third
11 column which says third-day delay.

12 For example, on January 12th, 2016, which was a
13 Tuesday, 58 percent of the cases were made available to the
14 public and the press on the same day but 42 percent of those
15 Tuesday cases were not. The sampling that we provided shows a
16 number of instances in which weekday filings were not made
17 available on the same day.

18 THE COURT: I asked whether it took more than a day.
19 Using that example that you just provided, were there any cases
20 that were withheld until the Thursday, say?

21 MR. HIBSHER: I think the several-day delays occurred
22 on weekends and/or holidays joined by weekends. Usually, it's
23 a next-day filing. As you know, this is a sampling. We did
24 not go through every single filing comprehensively. Here we
25 are on January 22nd. 69 cases were filed. That must have been

1 a Friday, your Honor.

2 I can go through the data and supplement my remarks
3 with a response to that question, but as I stand here, I don't
4 know for sure whether the delays in filings on nonweekend and
5 holiday days were greater than one day.

6 THE COURT: That is my understanding. If that is the
7 case, you're getting every complaint within 24 hours, say?

8 MR. HIBSHER: Cases are filed in the morning. I think
9 it would be better to say that we are getting cases filed on
10 non-Friday weekdays that do not precede a holiday by the end of
11 business the next day. It may not be 24 hours. It may be 30
12 hours or more. I'm splitting hairs, but I want to be clear
13 about what the delay is.

14 The delay is important. It may not seem like a major
15 delay, but access to judicial documents is essential to public
16 understanding the court process. This is a concept that has
17 been developed by a number of cases, beginning in 1980 with the
18 Supreme Court's Richmond News and culminating with the
19 Bernstein decision in the Second Circuit this year, which made
20 clear that complaints are entitled to constitutional access
21 under the First Amendment.

22 Despite the nature of the delay, it is well known that
23 news quickly goes stale. It is the function of the press to
24 report on news promptly largely because the news worthiness of
25 a story is often fleeting. The loss of a First Amendment right

1 of access to court documents, which we think Bernstein clearly
2 establishes here, even for minimal periods, constitutes
3 irreparable injury under the First Amendment.

4 Those lines are not just my words. Those lines are
5 taken from the Supreme Court and the Second Circuit cases,
6 which we cited in our brief.

7 THE COURT: Is there authority within the Second
8 Circuit that defines how quickly access has to be provided?

9 MR. HIBSHER: Lugosch in the Second Circuit referred
10 to immediate access. Bernstein quotes Lugosch and says once a
11 First Amendment right of access attaches, the access must be
12 immediate. The Supreme Court uses the word "immediate." Fresh
13 Grove in the Seventh Circuit, one of the leading cases in this
14 area, uses the words "immediate" and "contemporaneous."

15 There are no cases in the Second Circuit which parse
16 this particular factual issue, but Bernstein makes clear that a
17 complaint is entitled to First Amendment protection. All of
18 the cases dealing with First Amendment access, whether they
19 arise in connection with sealing or with limited access to
20 certain kinds of judicial proceedings, all talk about the First
21 Amendment right of access being one that is immediate.

22 When we are talking about the media and the fleeting
23 nature of the news, and particularly when we are in a setting
24 like New York City, which is the media capital, and a court
25 like the supreme court in New York County, where so many of the

1 cases are of incredible importance, a delay of one day is
2 really a news cycle.

3 We put into our moving papers three newsworthy
4 examples of cases which were filed on one day. Trump v.
5 Univision was one. The filing attorney received a received
6 stamp from the system that receives electronically filed
7 documents, and within an hour or two a page 6 online New York
8 Post had a story of Trump suing Univision for its cancellation
9 of the of the Miss Universe pageant. The Courthouse News
10 Service and the public did not see that case for 22 hours.

11 THE COURT: You just said the New York Post ran the
12 story.

13 MR. HIBSHER: It did.

14 THE COURT: So the public therefore had access to the
15 story.

16 MR. HIBSHER: The public that reads New York Post had
17 it. But the single media outlet was fed that unprocessed and
18 unofficial copy of the complaint. We have copies of it in our
19 reply declarations which show the copy that the lawyer who
20 filed it received on the day it was filed as well as the
21 official copy 22 hours later the next day.

22 The lawyer who filed that complaint undoubtedly fed
23 that complaint to the media outlet of his or her choice. Did
24 it become public after the lawyer did that? Perhaps. But
25 Courthouse News Service, which has hundreds of subscribers,

1 many of which are media outlets, did not have that case
2 available and was questioned by many of its subscribers as to
3 why it did not.

4 THE COURT: Why is that of First Amendment
5 significance? I understand that if the complaint had not been
6 made available at all. But the fact that a newspaper had it
7 and made it available immediately, doesn't that assuage the
8 concern that the public not have access to it?

9 MR. HIBSHER: On the contrary. The fact that a
10 litigant or a lawyer can feed a filed complaint, which is a
11 judicial document and to which he has received a received
12 stamped from the court, can feed that document to a media
13 outlet of choice is a kind of unevenhandedness that I believe
14 the First Amendment seeks to eliminate.

15 THE COURT: Do you think that the First Amendment
16 seeks to create a level playing field for newspapers, radio
17 stations, news outlets, etc.?

18 MR. HIBSHER: I think the law considers the press to
19 be a surrogate for the public. It doesn't discriminate. It
20 considers the press in general to be a surrogate for the
21 public, and I think there is an assumption that the press will
22 be treated evenhandedly. I have not seen a case which parses
23 this particular issue out.

24 THE COURT: I asked the series of questions because
25 you appear to base your argument at least in part on the fact

1 that Courthouse News Service is being harmed. But it will
2 always be the case that a litigant will or may favor one media
3 outlet or another. There is certainly nothing that courts can
4 do about that, whether you are getting immediate access or not.
5 For example, a litigant can give a draft of a complaint that is
6 going to be filed to a favored reporter.

7 MR. HIBSHER: This is true. The difference, however,
8 is this when a litigant gives a draft of a complaint, whether
9 it is to encourage settlement or for any other reason, that
10 litigant is giving an unofficial copy of the complaint. The
11 litigant does not have the protection of the privilege that one
12 gets when one has filed information in a publicly filed
13 complaint. The recipient has no certainty that the complaint
14 will ever be filed. And that is a process that we have seen
15 since litigation began. Drafts of complaints are exchanged for
16 all sorts of reasons.

17 When it is an official court document -- Bernstein
18 makes this very clear -- a First Amendment right attaches at
19 the moment that it becomes an official court document. Cases
20 that we cite in our brief are really eloquent in talking about
21 the press's role in informing the public and particularly
22 informing the public on the institution of the judiciary.

23 The news cycle is fleeting. When there is a delay of
24 one day or when a litigant is allowed to provide a copy of an
25 official court document that he has received a stamp on but the

1 public has not yet seen to a particular news outlet, we believe
2 that creates a First Amendment violation.

3 THE COURT: Why are you here alone? Why is CNS here
4 alone?

5 MR. HIBSHER: Your Honor, we have litigated this issue
6 in several federal courts around the country. We talked in our
7 papers about the Central District of California case called
8 Planet, a Southern District of Texas case as well. In some of
9 those cases amici have come in that have been representatives
10 of the press. The Planet case went to the Ninth Circuit two
11 times. And there were numerous representatives of news
12 organizations that joined those cases.

13 At this stage, particularly in the preliminary stage,
14 we did not reach out to news organizations to try to solicit
15 that interest. We were hopeful that the issues that we
16 articulate in this case would be resolved amicably. We talk
17 about our efforts to do that in our papers, and we continue to
18 be hopeful that that is a possibility.

19 THE COURT: You say preliminary. Certainly it is
20 preliminary at least at the stage of this litigation. But the
21 papers that you submitted indicate that you have been trying to
22 get the clerk to provide you with this access going back to at
23 least I think it was July of last year.

24 MR. HIBSHER: Correct.

25 THE COURT: Were any efforts made to bring in fellow

1 newspaper --

2 MR. HIBSHER: No, your Honor, we have not made an
3 effort in this jurisdiction toward that end. It is possible,
4 if this case continues, that this will be an issue that we will
5 certainly make other media aware of. That may follow. But we
6 have not made that effort, we have not been turned down. That
7 is the status on that one.

8 THE COURT: You provide in your papers comparisons of
9 what other courts do, including this court and other states
10 around the country. Can you give me a rundown, one or two, of
11 what the other New York City counties do.

12 MR. HIBSHER: All the counties in New York City follow
13 the processing rules that are followed here. By "here" I mean
14 New York supreme. This is a statewide issue. The numerosity
15 of filings and the importance of filings in New York County far
16 outweigh any of the other counties in New York State.

17 THE COURT: If I issue the injunction that you
18 request, who will it affect? What courts will it affect?

19 MR. HIBSHER: It will affect New York supreme court,
20 your Honor, and it will affect the clerk of New York County.

21 THE COURT: All right.

22 MR. HIBSHER: Your Honor, the defendant in their
23 responding papers does not deny that his administrative
24 processing causes delays, nor does he take issue with the
25 sampling data that we included in our moving papers, though he

1 characterizes it as misleading.

2 THE COURT: And exaggerated.

3 MR. HIBSHER: And exaggerated. He talks about the
4 numbers of weekend filings that are included in our sampling.
5 We believe that once the court allows electronic filings after
6 hours and on weekends and once the filings that occur during
7 those times become official court records, as they do
8 instantaneously when they receive a received stamp and the
9 statute of limitations is tolled under the law, that we have a
10 right to see those documents. In the end, relatively few cases
11 are filed on the weekend. I think weekends and holidays only
12 constitute about 3 percent of all of the cases filed.

13 THE COURT: If I read the papers correctly, the New
14 York supreme court closes at 5:00.

15 MR. HIBSHER: Correct.

16 THE COURT: But you may still file complaints
17 electronically after 5 o'clock.

18 MR. HIBSHER: 24-7, your Honor.

19 THE COURT: Including weekends?

20 MR. HIBSHER: Including weekends and holidays.

21 THE COURT: As I understand it, if you file
22 electronically after 5:00 p.m. on a particular day, the
23 complaint is deemed filed as of the following business day. Am
24 I correct about that?

25 MR. HIBSHER: No, your Honor. It is deemed filed as

1 of the moment that you electronically file it.

2 THE COURT: What access do you want? If something is
3 filed at 8 o'clock in the evening or on a Sunday morning, what
4 are you looking for with respect to those filings?

5 MR. HIBSHER: We would like to see those complaints as
6 we do in this courthouse and in the vast majority of federal
7 courts where the complaints go on to PACER for the entire world
8 to see.

9 The defendant is concerned about revealing complaints
10 that may not have been processed because some of those
11 complaints may have incorrect venues or they may be matrimonial
12 actions that are filed in New York supreme improperly. Our
13 response to that is that there are safeguards in place when you
14 file electronically that alert the filer and there are laws in
15 place that place the burden on the filer to redact personal
16 information and to make certain that a matrimonial action is
17 not filed.

18 What we are asking for here is not Internet
19 instantaneous access. What we are asking for is timely access
20 upon filing. Traditionally, the press room at New York supreme
21 stays open long after the courthouse closes. There is a
22 terminal in that press room. It is the very same terminal onto
23 which cases, after they are processed, flow.

24 What we are asking the defendant to do is to make
25 cases that are filed with the Court and are official court

1 documents available to the press and public upon receipt in a
2 timely way. That is the injunction that the district court in
3 Planet in the Central District of California issued.

4 In the Jackson case in the Southern District of Texas
5 the court issued an injunction requiring the clerk to provide
6 same-day access. In Planet the judge issued an injunction that
7 required the court to provide timely access but precluded
8 administrative processing before access and effectively
9 provided same-day access. That is what we are seeking here.

10 THE COURT: I'm just trying to see what an injunction
11 would look like. If something is filed on a Sunday morning --
12 I know this building is open 24-7.

13 MR. HIBSHER: The press room in this building is open
14 24-7.

15 THE COURT: What is the story across the street? Does
16 the building shut down?

17 MR. HIBSHER: The building shuts down at 5:30, when
18 the last security guard leaves. But people are allowed to
19 remain in the supreme court building, and there is an exit
20 which people who stay late use, including members of the press
21 who are in the building before the closes and who stay late.

22 THE COURT: For a Sunday morning filing, Sunday
23 morning electronic filing, are you requesting that the building
24 be open for the press or remain open for the press?

25 MR. HIBSHER: Not necessarily. That filing can be

1 made available electronically, and it could be made available
2 just to credentialed reporters.

3 THE COURT: Off-site, remotely?

4 MR. HIBSHER: Off-site. It could be done on-site.

5 But we are not asking the court to open its doors at 8 o'clock
6 on Sunday.

7 THE COURT: Do you have that access now, remote
8 access?

9 MR. HIBSHER: We have remote access to the official
10 filings now on the New York State website where cases flow, and
11 we have access in the press room to cases that are processed.
12 What we would ask for is either on-site or remote access. It
13 doesn't have to be made available to the public until the clerk
14 of the court has an opportunity to do whatever processing it
15 deems necessary, and those cases which have been filed with the
16 court and are judicial documents would be made available to the
17 press in that manner.

18 It is not exactly what you have in the Southern
19 District, where cases flow immediately onto PACER for the world
20 to see 24-7. We would be very content with something sub-
21 stantially less than that. Our issue here is not that we put
22 these cases on the Internet for the world to see.

23 The kinds of data that the clerk says in his papers he
24 is concerned about catching, like improper venue cases stamped
25 Kings County supreme and somehow the lawyer files it in New

1 York supreme, we would get to see that under the injunction
2 that I propose, and the clerk of the court would have an
3 opportunity after it goes public to do whatever the clerk of
4 the court needs to do to claw that back or to inform the filer
5 that it was a Kings County document improperly filed.

6 THE COURT: I take it, and I think you made a
7 reference to it in your papers, that New York State laws, court
8 rules, applicable regulations put the onus on the litigants to
9 make sure that that type of information -- Social Security
10 numbers, identities of minor sexual abuse victims, for
11 example -- that type of information is not put in filings or,
12 if it is, it is put in some redacted fashion, correct?

13 MR. HIBSHER: Correct. The same sort of rules exist
14 in the federal system, which put the burden on the filer to
15 redact privacy information. When one files in the state
16 system, in New York supreme, one is repeatedly reminded about
17 the redaction rules. One has to check a box saying that I have
18 read the redaction rules and I have complied with those rules.

19 THE COURT: If you want to file electronically a
20 matrimonial matter, could you?

21 MR. HIBSHER: We appended to the reply affidavit
22 screenshots of what the filer sees. The categories do not
23 include matrimonial. I asked my colleagues, who do this all
24 the time, that very question: could you file a matrimonial
25 action if you really wanted to? The answer is perhaps. You

1 might check off tort and file a matrimonial action as a tort.
2 Under the proposal that I am asking your Honor to order, that
3 is a matrimonial action that would then be made available to
4 the press.

5 However, this is a First Amendment case. There is a
6 First Amendment right of access that has attached. The law is
7 very clear that once that occurs, the burden shifts to the
8 defendant to show that he has an overriding interest, that that
9 interest is essential to preserve higher values, and that is
10 narrowly tailored to preserve that interest.

11 The defendant has to come forward with facts to
12 illustrate the harm that he has hypothesized in his papers. He
13 is the filer. Presumably he has the data on the errant filings
14 that he describes in his complaint. He has the numbers on the
15 matrimonial actions that have erroneously been filed, e-filed,
16 in state supreme court and would, had the clerks of his
17 department not caught them, have been made public in violation
18 of the law.

19 THE COURT: How many are there, do you know? Do you
20 have a sense of how many actions are picked up by this review
21 process that the clerk goes through?

22 MR. HIBSHER: I do not have a sense because the
23 defendant's papers are completely silent on any data at all.
24 The cases which we cite make very clear that the harm that they
25 allege in support of a process that prevents access under the

1 First Amendment has to be provided, has to be illustrated with
2 empirical evidence. There is no data whatsoever in their
3 papers. They have not met a key element of their burden to
4 show what this harm is.

5 THE COURT: Even assuming for the sake of argument
6 that filing something improvidently because of venue would
7 equal the value of allowing the press prompt access, assuming
8 those two values -- poor venue, First Amendment access -- are
9 essentially equal, for the sake of argument we don't have a
10 sense as to whether or not people are filing in the wrong venue
11 so often that it begins to trump the First Amendment right?

12 MR. HIBSHER: I do not have any sense of numerosity.
13 Having gone through the filing instructions several times now,
14 I would be very surprised if very many matrimonial actions are
15 filed as tort actions or real estate actions or any other
16 actions in New York supreme.

17 THE COURT: What about the situation where the
18 administrative review picks up a Social Security number, say?

19 MR. HIBSHER: Good example. There is a specific law
20 in New York that puts the burden on the filer to redact that
21 information, which we cite in on you papers. The e-filing
22 prompts make very clear that Social Security numbers and other
23 private information has to be redacted and reminds the filer --
24 who is typically an attorney who has an account with the court
25 system; when he presses that submit button, he has to have an

1 account -- reminds the attorney that he has to comply with
2 those redaction rules.

3 As I read the defendant's declaration in this case, I
4 must say I do not see a declarative statement that the
5 defendant's office reviews the pages of a complaint to find out
6 if they contain Social Security numbers or other private
7 information. They certainly suggest that they review papers
8 for venue and for attorney's signature and for proper captions
9 so the captions don't say "et al."

10 Attorney's signatures are taken care of in the
11 e-filing system because when you press submit, you are effect-
12 ively signing the document. In the old days the cashier
13 collected your fee for the index number. The electronic system
14 is accomplishing that task as well.

15 The kind of thing that the statute which he cites
16 might require him to review, something like improper venue, is
17 the sort of thing that we believe could not possibly override
18 the First Amendment entitlement that we have.

19 THE COURT: I think they either said this or suggested
20 this in this their papers, and I will ask them the same thing.
21 Part of your argument is that before e-filing, CNS and other
22 news organizations had same-day access to all of the complaints
23 that were filed on a particular day prior to the type of
24 processing they are doing now and not letting you see until
25 they process?

1 MR. HIBSHER: Let me clarify. The defendant took
2 issue with a certain part of that contention in our moving
3 papers. What we are saying is that prior to e-filing we saw
4 virtually 100 percent of all the filings on the same day. The
5 system was that if you were a lawyer, if you were a clerk at a
6 law firm, you went up to the cashier's office, you paid your
7 money, you handed that cashier your papers.

8 The cashier might have done a quick, cursory review,
9 might have looked at venue, for example, and said, counselor,
10 this says Kings County, go across the river, collected your
11 money. They might have looked for an attorney's signature.
12 But that was it.

13 We are not suggesting that there was absolutely zero
14 quick processing that occurred in the pre-electronic filing
15 era. What we are saying is we had 100 percent access during
16 that time. When e-filing came into being, the commission,
17 which really studied the process, made very clear that the kind
18 of access that existed prior to e-filing, access to court
19 documents -- they were very specific before the Bernstein
20 decision on complaints -- needed to continue unimpaired and
21 uninterrupted. That is not what has happened here.

22 The rules which they cite, even if they are abiding by
23 those rules, are rules that cannot under the law, to use your
24 Honor's word, trump the First Amendment. The Second Circuit
25 says, "Obviously, a statute cannot override constitutional

1 right." The constitutional right here is absolutely crisp.

2 THE COURT: In other words, those rules say that the
3 clerks have to take certain steps; it does not say that it
4 cannot provide access to the press until those steps are taken?

5 MR. HIBSHER: Exactly. None of those rules say that
6 the clerk has to do anything prior to releasing documents to
7 the press or the public. The rules that require the clerk to
8 do anything, if they do, and I think there is a bit of an
9 argument there, are very limited to things like venue,
10 signature of attorney. The Social Security number piece is
11 something that I have looked at very closely, and I did not
12 find it in the current rules as an obligation placed on the
13 clerk's office to actually do.

14 Our position is that when we have a clear
15 constitutional right and when there is a conceded delay, a
16 conceded withholding of complaints, on many days -- though it
17 is only weekend days and holidays where the delay goes on for
18 several days -- on many days we see access that goes below the
19 66 percent average and by a good deal.

20 In his affidavit the clerk of the court very candidly
21 says there are emergencies. There is one person or two people
22 who do this, they get sick.

23 We think the First Amendment requires a much higher
24 standard. The weekend filings, our papers describe some of the
25 cases that we didn't see for three and four days. They didn't

1 rise to the notoriety of Trump v. Univision, but they were very
2 important cases that our subscribers would be very interested
3 in knowing about in our daily litigation reports.

4 I don't know if your Honor wants me to address their
5 abstention argument.

6 THE COURT: Briefly, if you will.

7 MR. HIBSHER: The abstention argument, relying on the
8 Younger-O'Shea doctrine, we think is inapplicable here. That
9 doctrine really contemplates a federal court action that will
10 interfere with ongoing state court adjudications. That is not
11 what this case is about. What we are looking for is a simple
12 order directing the clerk to provide timely access. It is the
13 very order that was issued in the Jackson case and in the
14 Planet case.

15 In the Planet case the district actually granted an
16 abstention motion, and the circuit court reversed. In
17 reversing the abstention order, the Ninth Circuit relied on the
18 Second Circuit in Hartford Courant. Neither of those cases
19 was, by the way, discussed by the defendant in their papers.

20 This is not the kind of situation that Younger-O'Shea
21 contemplates where the court is going to involve itself in
22 conflicted workings of the state judiciary. All of the cases,
23 and I will be brief and won't go into them, all of the cases
24 they cited were dramatically different from the kind of
25 injunction that we are requesting your Honor to issue.

1 I believe that the kind of injunction that we are
2 asking for is what was issued in the Planet case and the
3 injunction in Jackson, which are the only two cases dealing
4 with delays brought on by clerks processing complaints after
5 they were filed. The kind of injunctions issued in those cases
6 are exactly the kind of injunction that we want here. It
7 doesn't constitute an inappropriate interference with the
8 workings of the state judiciary.

9 THE COURT: Talk about that. What type of burden, if
10 any, would it impose on the clerk of the court, or cost?

11 MR. HIBSHER: Our papers say that in the course of one
12 of the meetings that we had with the defendant, the defendant
13 stated that providing the kind of access we are seeking would
14 require some tweaking of the software system. Our client has
15 been involved in transitioning from paper filing to e-filing in
16 many courthouses around the country and has assisted in that
17 process, and has reported that software providers are typically
18 able to provide the kind of press-only access to new filings
19 with relatively little expenditure, if any, and relatively
20 little expense.

21 It does not require that they keep the courthouse
22 open. If they want to limit access to credentialed press, that
23 is something that is very easy to accomplish.

24 THE COURT: Let me ask you very quickly about that.
25 Hasn't the concept of credentialed press expanded tremendously

1 in recent years? Can't I start a blog now and declare myself
2 to be press?

3 MR. HIBSHER: I'm not certain about that, your Honor.
4 Both this courthouse and the Supreme Court New York County have
5 certain requirements before an individual member of the press
6 will be issued a press pass: not required to leave their
7 telephones at the desk downstairs, admitted to the courthouse
8 much more easily than other members of the public.

9 I have to assume that with the application to achieve
10 that end, there needs to be some written support from a bona
11 fide media outlet. Might it be a blog? Perhaps. That is the
12 sort of detail that I feel very confident the clerk of New York
13 County will be able to address appropriately and will be able
14 to protect the kinds of concerns that they may have about
15 complaints which contain errant information being made
16 available immediately to the general public.

17 THE COURT: Thank you.

18 MR. HIBSHER: Thank you, your Honor.

19 THE COURT: Mr. Adlerstein, how are you?

20 MR. ADLERSTEIN: Well, thank you, your Honor.

21 I can start by advising your Honor where New York
22 State is in terms of its policies and practices in this area
23 and where County Clerk Tingling is. The last thing that New
24 York State, through its announced policies, has embodied in its
25 court rules and the last thing that Judge Tingling really wants

1 to do is to have significant delays in documents that are
2 accepted by the court for filing disseminated to the press and
3 public. I think that all of us in this courtroom are cognizant
4 of the First Amendment requirements and are sensitive to them
5 and want to operate within the bounds that they provide.

6 However, New York State has very sensible policies
7 that are embodied in its court rules and its statutes. Two of
8 the court rules were cited in our papers. One is the one that
9 says that in accordance with the C.P.L.R. provision -- and I'm
10 quoting from New York court rule 202.5(d)(1) -- the court
11 clerk, the county clerk, as appropriate, shall refuse to accept
12 certain kinds of papers for filing. The provision goes on to
13 enunciate what the various aspects are that the county clerk
14 ought to be looking for.

15 Mr. Hibsher in his papers and oral presentation
16 focuses about change or some kind of major change that
17 supposedly took place when e-filing went into existence. The
18 court rules are promulgated by the administrative board of the
19 court, which is made up of the chief judge of the state, the
20 chief administrative judge, and all of the presiding justices
21 of the four Appellate Divisions.

22 It promulgated those rules for e-filing that have a
23 provision that says no later than the close of business on the
24 business day following the electronic filing of a document
25 there should be notification that goes out with regard to that

1 particular document.

2 THE COURT: What does that mean?

3 MR. ADLERSTEIN: We have discussed with county clerk
4 Tingling this aspect very carefully. What it means is that
5 when a party, whether it be during the business day or whether
6 it be in the evening or whether it be on the weekend, submits a
7 pleading to the court for filing, what occurs is that there is
8 a review that takes place by a person.

9 It's not done electronically. The review process is
10 not done electronically. It is done by a person who zeros in
11 on the provisions in the administrative regulation that I
12 quoted earlier telling the court clerk that the court clerk has
13 an obligation to review pleadings for certain possible defects.

14 At that point when the county clerk is to review that
15 document and no later than the business day following that
16 presentation of the document by the intended filer, the county
17 clerk should do those processes and make a determination of
18 whether or not an index number can be issued for that pleading.
19 It is the issuance of the index number that the county clerk
20 does, after a person has eyeballed the pleading, that then puts
21 it into the system for general dissemination.

22 THE COURT: That's a policy that, and I want to be
23 careful how I say this, has no particular legal import,
24 correct?

25 MR. ADLERSTEIN: It has a very critical administrative

1 impact.

2 THE COURT: I understand that. But the types of
3 examples that are discussed in the papers and the types of
4 things that the clerks appear to be reviewing for seem to me to
5 be somewhat ministerial. Right?

6 MR. ADLERSTEIN: They are largely ministerial. If
7 someone were to catch a pleading that was filed that is really
8 a matrimonial action and it is couched in the pleadings as
9 something else, that might be able to be rejected and then
10 straightened out. There could be some unusual situations.

11 However, there is this directive that the county clerk
12 is supposed to look for things that the court system regards to
13 be important before the issuance of an index number.

14 THE COURT: Like some typo in the caption?

15 MR. ADLERSTEIN: Not a typo in the caption, your
16 Honor. One of the provisions talks about the absence of a full
17 recitation of the parties who are in the caption. For
18 instance, if somebody sues ten people and puts John Doe, et
19 al., the clerk rejects it because the court doesn't know who
20 the other parties are.

21 THE COURT: Is a complaint a judicial document?

22 MR. ADLERSTEIN: Usually, I would say yes. However,
23 it's not accepted for filing until somebody actually reviews it
24 and it's given an index number. Whether it's a judicial
25 document before that happens, I think that's not the word of

1 art that's used in the regulations.

2 THE COURT: In the New York State regulations?

3 MR. ADLERSTEIN: The regulations are set up so that it
4 is presented by the intended filer, there is an opportunity for
5 a person to review the document, and at that time, if the
6 document is deemed to be free of the defects, it goes in.

7 The answer would have to be I think on balance it is
8 not a judicial document until the court system says it is by
9 issuing an index number.

10 THE COURT: Is the filing of the document an event of
11 legal significance at all in your mind?

12 MR. ADLERSTEIN: It would be for statute of
13 limitations purposes. Here is how it operates. If the
14 document is deemed to be acceptable so that it gets an index
15 number, then it is deemed to have been filed for statute of
16 limitations purposes when it was first presented. However, if
17 it is rejected, the document is rejected, it is not deemed to
18 be presented for statute of limitations purposes until it is
19 accepted as having been valid at the time it was presented.
20 That's how that mechanism operates.

21 THE COURT: In New York State if you file a complaint
22 on the last day of the statute and it has an et al. but
23 otherwise is a valid complaint, the next day the clerk can
24 decline to accept that document, and that litigant is out of
25 luck on the statute?

1 MR. ADLERSTEIN: The litigant may be, your Honor. I
2 know that there exists equitable tolling provisions that people
3 can go into court and request to have documents deemed to be
4 filed and that becomes a judicial determination, not something
5 that the clerk does.

6 THE COURT: What about this afternoon? What if there
7 is a Christmas party going on across the street at the clerk's
8 office at 60 Centre and they are not able to get to the
9 complaints that came in, say, by noon? That person can be out
10 of the box because there wasn't a person at the clerk's office
11 to review the complaint in the afternoon?

12 MR. ADLERSTEIN: I think there are people in the
13 clerk's office in the afternoon, your Honor, for paper
14 documents that are submitted. But electronically it's deemed
15 to have been received at the time it is electronically
16 presented, and then it is checked out by a person when the
17 court opens on the next business day or the same business day,
18 and at that time there is an index number that is given.

19 The important principle is that it has been the
20 practice uniformly that a person eyeballs the document before
21 the index number is issued, and it is done because of the kind
22 of provision that I mentioned earlier. It operated that way,
23 your Honor, during the time it was exclusively paper. I think
24 County Clerk Tingling clarified in his affidavit in response to
25 counsel's papers that it was never a laying in front of the

1 press or public pleadings before they were reviewed and then
2 were given an index number.

3 THE COURT: Do you have a sense as the clerk's office
4 does this review, of the hundreds of complaints that are filed,
5 how many times they have to kick complaints back because of
6 some venue issue or because of some et al. issue or some lack
7 of signature issue?

8 MR. ADLERSTEIN: Yes. The assessment that I have
9 heard, your Honor, is that it is a very modest proportion, a
10 very modest percentage. I haven't been given an actual
11 percentage. What we are talking about is the clerk's office
12 wanting to be careful, when it takes in a case and assigns it
13 an index number, to know that it really belongs to the court
14 and that there is at least some essential structure. And this
15 is not just made up by County Clerk Tingling. This is in
16 accordance with the regulation that the administrative board of
17 the courts has promulgated.

18 THE COURT: I understand that. Let me ask you this.
19 Obviously, there is a concern on the part of the clerks that
20 documents be properly formatted and contain whatever essential
21 elements are required by the regulations. But you say it's a
22 modest number that are rejected on that basis. Talk about the
23 First Amendment and how -- and it clearly affects the First
24 Amendment -- how you can justify that process in the face of
25 the fact that what you are doing is essentially a ministerial

1 review and, second, that the risk that is involved seems to me
2 to be so relatively miniscule: a complaint gets through and
3 they've got the wrong venue.

4 MR. ADLERSTEIN: Your Honor, I think this gets to the
5 question that your Honor asked of counsel why aren't more
6 people here. I think County Clerk Tingling's papers exemplify
7 the fact that counsel has really exaggerated the problem. You
8 do not see people complaining out there that they are not
9 getting access to New York State court pleadings either
10 uniformly or with a degree of promptness which is acceptable.
11 That's not the intention with respect to the way that it is
12 administered certainly. And the numbers that were contained in
13 the affidavit that was submitted by plaintiff here we showed
14 were exaggerated because they included weekends.

15 THE COURT: They took out the weekend and holiday
16 papers.

17 MR. ADLERSTEIN: They did. But there is something
18 very interesting about the numbers. They created a new chart.
19 They had an initial chart which had on it one column which was
20 one-day, and then the second one was two-day plus. When we
21 called them on the fact that they were including weekends and
22 holidays, they took out the two-day plus column, and instead
23 having a one-day column, they created a new column called
24 one-day plus.

25 If you take a look at the numbers that they

1 accumulated, they come up with a figure of overall statistics
2 of 2 or more days' delay, and it is pretty much the same number
3 of matters which were filed on Fridays. I think Mr. Hibsher
4 mentioned when your Honor gave an example that it was a Friday
5 that they were talking about with respect to the one-day plus
6 column --

7 THE COURT: Generally, and you folks will correct me
8 if I'm wrong, if you look just at Monday through Thursday,
9 there was still a significant percentage of complaints that
10 they were not seeing because of this administrative review
11 process, correct?

12 MR. ADLERSTEIN: There would be cases that would be
13 filed at the end of the day. Mr. Hibsher is not asking, I
14 don't believe, for personnel to be assigned to work in the
15 courthouse past 5 o'clock. He has advised your Honor that the
16 plaintiff is not looking to keep the courthouse open past 5
17 o'clock. We put in our papers that there is a lot of budgetary
18 considerations that apply there.

19 THE COURT: Tell me about those. It sounds as if all
20 that is really required is maybe an additional terminal and
21 some software that would allow them -- I don't even know if it
22 is additional software, because apparently they have remote
23 access now -- allow them to remote access at an earlier period
24 of time.

25 MR. ADLERSTEIN: That creates some difficulties about

1 how you set that up, about who is going to come in to get that
2 access and trying to make distinctions between how people are
3 going to get credentialed, whether or not favoring the
4 credentialed press over the public in terms of the access that
5 the public would have to documents. You would have to have all
6 of those determinations resolved.

7 Basically, what you are talking about is departing
8 from the very important operating principle that New York State
9 courts have had going forward and that is called for under the
10 regulations, which is that when a document is submitted for
11 filing and to commence a litigation -- and it would need to be
12 during normal business hours because the court is not going to
13 easily hire people to work overtime and so on in order do
14 this -- it would need to be reviewed by a person before it is
15 accepted for filing and then disseminated. That's what the
16 regulations say.

17 THE COURT: You can still do that, right, without
18 preventing the press from having access? You can do all that
19 and I'm sure you will do all that.

20 MR. ADLERSTEIN: You can have people working 24 hours
21 a day, I suppose.

22 THE COURT: Unless I'm completely misreading both sets
23 of papers, that's not what they are asking for and that is not
24 what would be required. Essentially what would be required is
25 before your staff gets through something that is e-filed, it

1 gets made available to the press, at least to the press.

2 MR. ADLERSTEIN: Your Honor, if I may add one thing?

3 THE COURT: Sure.

4 MR. ADLERSTEIN: We have direct filing by pro ses.

5 They can apply to be able to e-file and then they can e-file.

6 You have the difficulty that would pertain that you don't know
7 what a pro se complaint is going to look like when it comes in.

8 I'm not sure how the federal courts handle the pro se
9 registration process and what the pro se clerk does with pro se
10 complaints and whether they are made immediately available by
11 the federal court as soon as they hit the computer or whether a
12 pro se can just go ahead and file from the outside and register
13 without any kind of supervision so that those complaints are
14 eyeballed by a person before they are distributed to the
15 general public, but I suspect they might not be.

16 THE COURT: I think you are probably right. I think
17 it also depends on whether they are in forma pauperis or not.

18 MR. ADLERSTEIN: Yes. You have those kinds of
19 situations where they are pro se complaints as well.

20 THE COURT: That is also an easy software fix, isn't
21 it?

22 MR. ADLERSTEIN: I don't know. I don't know what kind
23 of programming you would need to do in order to put in a
24 registration of all attorneys and have software be able to
25 recognize who is filing. Think there are some difficulties

1 there of a practical nature that are not necessarily so easy in
2 terms of setting it up.

3 THE COURT: Mr. Adlerstein, the case law that has been
4 presented here is fairly unanimous against the position that
5 you are taking. How do you want me to analyze the cases that
6 they have cited from California and Texas? How do you suggest
7 that I analyze the state courts' procedures in light of Second
8 Circuit authority about a complaint and the Second Circuit said
9 yes, the filing of a complaint -- first of all, a complaint is
10 very easily determined to be a judicial document; it was an
11 easy determination by the Second Circuit. You seem to have a
12 little trouble with it.

13 MR. ADLERSTEIN: I think, your Honor, the Second
14 Circuit cases have not dealt with this kind of a situation
15 where you are talking about this kind of very quick processing.
16 You are talking about principles relating to what kinds of
17 documents would be deemed to be a judicial document so that
18 they would need to be available to the public. The court
19 enunciated the word "immediate" without putting a definition on
20 it. We submit to the Court that the New York State courts have
21 already a policy which is consistent with the First Amendment
22 in terms of the next business day.

23 THE COURT: The next business day is immediate?

24 MR. ADLERSTEIN: I think it is immediate enough under
25 the First Amendment. Secondly, if you take a look at the cases

1 in California, the district court in California, which had the
2 most recent opinion on the case on remand from the Ninth
3 Circuit, said it need not be the same day. They are not going
4 to declare that there is a constitutional requirement that it
5 has to be on the same day. The Ninth Circuit, when it
6 remanded, expressed some skepticism about how immediate it was
7 going to have to be, whether it would have to be on the same
8 day. So it is not resolved there. I'm told that the
9 litigation is actually still going on in California.

10 Secondly, the clerk in California was absolutely
11 intransigent. Take a look at the district court opinion. The
12 first page talks about the fact that he withheld documents from
13 the press for weeks and that there was something going on there
14 relating to him and the way that he was handling things to
15 deliberately obstruct the press.

16 Here we have nothing of the kind. We have a New York
17 State court system which is operating pursuant to regulations.
18 The last thing that County Clerk Tingling wants to do is to
19 hold up these documents. What we are talking about is the very
20 principle of able to have a person during business hours review
21 the document before it is assigned the index number and
22 distributed to the press or public. And I'm told that once it
23 is available, it is available to the entire public.

24 THE COURT: I understand that. That's precisely what
25 we are talking about.

1 MR. ADLERSTEIN: You are inquiring about the case law
2 being possibly against our position. I submit to the Court
3 that it doesn't come anywhere close to our situation, to a
4 state entity which is handling itself as responsibly as New
5 York State does.

6 THE COURT: As I understand at least one of the cases,
7 it is a state court where the court presented what he or she
8 believed to be a very reasonable position: that once complaints
9 are received, they need to be reviewed, and only when that
10 administrative review takes place will they be made available
11 not only to the press but to everyone else. That is precisely
12 what we are talking about here, isn't it?

13 MR. ADLERSTEIN: Not really. We put in our brief that
14 what the clerk was going through there were many more steps,
15 things like putting labels on files, getting paper files set up
16 before documents would be made available to the press.

17 THE COURT: What is the danger here, Mr. Adlerstein?
18 What is the danger of providing immediate access to filings?
19 What would be the damage to the general public, the people of
20 New York County?

21 MR. ADLERSTEIN: Your Honor, there has been a
22 determination that's been made by the administrative board that
23 the administrative board wants the county clerks to look at
24 some things before filings are completed. There has been a
25 determination by the administrative board that the public

1 dissemination should be done by the next business day.

2 It is clear that many, many are provided the same day,
3 and even within a very, very short period of time, just a few
4 minutes. When you have the clerk there and they are working on
5 these things, there is no holdup. It's provided. Counsel may
6 have shown a couple of instances where there was an issue, but
7 this really isn't the pattern. It is not what the City of New
8 York is all about. It's not what the county clerk is all
9 about.

10 THE COURT: I understand that they don't mean to hold
11 up anything in an improper way. Still, the percentage that are
12 not provided, even when you discount holidays even when you
13 discount weekends, the percentage that are not provided on the
14 same day is substantial. By "substantial" I mean more than 25,
15 30 percent. Correct?

16 MR. ADLERSTEIN: It depends on how you measure same
17 day. If something comes in at 3:00 or 4:00 in the afternoon
18 and the county clerk doesn't have personnel on hand to be able
19 to process those until the next business day, it will get done
20 at 9:30 or 10:00.

21 THE COURT: Just so we are clear: something comes in
22 at 3:30 in the afternoon on Monday, same day is Monday.

23 MR. ADLERSTEIN: I understand. What I'm saying is
24 yes, there will be instances where something will come in in
25 the later part of the afternoon and it won't be looked at until

1 the following business day, as New York State regulations
2 permit under their prescription, and it will be done. I think
3 the objective of the county clerk is not to sit on those types
4 of instruments until the very end of the next business day.

5 THE COURT: I wasn't making any suggestion that it is.

6 MR. ADLERSTEIN: It gets done very early in the
7 morning, when there are people there to do it.

8 It is pointed out to me, your Honor, that if that is
9 going to be the definition, we are not sure that the numbers
10 that have been put out there by the plaintiff, you are talking
11 about something that arrives at 3:30 in the afternoon and then
12 gets done by 10:00 in the morning, is really part of the
13 numbers that they are throwing out there.

14 THE COURT: I don't intend to draw any bright-line
15 definition. Thank you.

16 MR. ADLERSTEIN: You're very welcome.

17 THE COURT: Mr. Hibsher.

18 MR. HIBSHER: Thank you, your Honor. I think I heard
19 for the first time what the alleged harm would be if the policy
20 of reviewing before access is provided to the press and public
21 is granted, and it has been characterized as modest. We don't
22 have numbers. We pointed out in our papers and I said before
23 that the cases make very clear that empirical data needs to be
24 presented to illustrate the kind of harm that the defendant
25 alleges in order to meet its burden under the shifting in this

1 kind of First Amendment entitlement case.

2 I also would like to say that the rule that Mr. Adler-
3 stein points to which provides for notification by the end of
4 the next business day is inadequate under the First Amendment.
5 When you asked me about delays before, I was looking for a
6 particular quote that I wanted to mention. It comes from the
7 Globe Newspaper case. That case said that delaying access for
8 as little as a day delays access to news, and that delay
9 burdens the First Amendment. So the next business day is not
10 acceptable. That is an issue which this case presents for your
11 Honor to decide.

12 The particular regulation that Mr. Adlerstein points
13 you to, however, says that the filer will be electronically
14 notified by the end of business the next day. That is too
15 late. If it's a complaint, the filer is the plaintiff and the
16 plaintiff will be notified the next business day. We do not
17 think that that rule, even if they were adhering to it all the
18 time, really meets the First Amendment obligations that they
19 have here.

20 You asked Mr. Adlerstein about when a document
21 becomes, I believe your words were, an official court document.
22 He conceded that when a document is filed, it tolls the statute
23 of limitations. But he provided a hypothetical in which the
24 clerk might review the document and reject it and then arguably
25 the filer would not have the benefit of the statute of

1 limitation.

2 They did not cite any cases in their brief to that
3 end, nor did they comment on the Appellate Division, Third
4 Department case that we cited in footnote 6 of our moving brief
5 on page 15, which presents this very question: whether a
6 petition was filed for statute of limitations purposes upon
7 arrival at the clerk's office or upon an assignment of an index
8 number.

9 That is the Johnson case, which concluded that on
10 arrival at the check's office is when the filer benefits from
11 the tolling of the statute of limitations. It's not exactly
12 what we are talking about, but it's pretty close in New York
13 law. I did not see anything in their papers that explicated
14 the argument that Mr. Adlerstein makes today with any kind of
15 legal citations.

16 You also asked about pro se filings in the federal
17 court. My understanding is that that is done by paper, that
18 pro ses do not electronically file. There is a paper desk, and
19 the press has access to pro se filings as soon as they are
20 done. If your Honor wishes, I can get you a supplemental
21 declaration on that point.

22 Mr. Adlerstein talked about the Planet case in the
23 Central District of California. He described the clerk there
24 as being intransigent. I think that is probably a fair
25 characterization at the beginning of the case. The case went

1 on for years. It went up to the Ninth Circuit two times.

2 But when Judge Otero, from the Central District of
3 California, issued the injunction that he did last May, I
4 believe. At that time the clerk was contending that they were
5 providing same day access in 97 percent of the filings. The
6 system had completely changed from the days of intransigence.
7 They were photocopying cases as soon as they came in. They
8 were scanning them, and they were providing much improved
9 access.

10 Yet Judge Otero said that the access they were
11 providing was not adequate. He directed them to provide timely
12 access upon receipt -- this is the language of the order -- and
13 precluded the clerk from doing any administrative process
14 before providing access. I think the reason was that he was
15 not persuaded that the kinds of things they were looking for
16 really rose to the kind of potential harm that would overcome
17 the First Amendment right of access, and the kinds of things
18 that the New York County Clerk is looking for similarly do not
19 do that.

20 You asked me earlier where are all the members of the
21 press. CNS has 27 hundred subscribers. Many press outlets are
22 our clients. They look to us to provide reports on civil
23 litigation. Some of these litigations are not the most
24 newsworthy cases. You don't see many reporters in the press
25 room either in New York supreme or even in the Southern

1 District. In a certain sense not only is CNS as a media outlet
2 a surrogate for the public, it is also a surrogate for the
3 press. It is like the AP wire service.

4 So, the significance to CNS of the kinds of delays
5 that we are seeing, the 30 percent delays to next-day cases
6 being provided after the news cycle has really come to an end
7 is really enormous.

8 Implicit in one of the questions was a question about
9 CNS's motivation in seeking this First Amendment right. What
10 Lugosch in the Second Circuit said of this question is that
11 consideration of the newspaper's ultimate interest in the case
12 should not affect the weight of the presumption, the First
13 Amendment presumption. Those interested in monitoring the
14 courts may well learn of and use the information, whatever the
15 motive of the reporting journalist.

16 No one is impugning the motive of CNS here. But the
17 fact is that motive is not the issue at all. There is a First
18 Amendment right to a filed judicial document, which admittedly
19 tolls the statute of limitations. The delay of a substantial
20 number for one day and of those filed in the evening and on
21 weekends for several days is not acceptable under the First
22 Amendment, and respectfully I do not believe that the defendant
23 has met its burden.

24 THE COURT: Thank you.

25 MR. ADLERSTEIN: Your Honor, may I?

1 THE COURT: Absolutely.

2 MR. ADLERSTEIN: I wanted to comment on just one or
3 two points very briefly. In terms of this constitutionality
4 argument relating to the regulations that I had cited, in
5 plaintiff's opening papers there was no recognition provided
6 for the regulations. There was no request that anything be
7 struck down for constitutionality purposes.

8 One of the reasons that we mentioned to the Court the
9 principles of abstention and comity was just this very thing.
10 We ask the Court take into consideration the important
11 constitutional value that lies with regard to a federal court
12 providing for measures which are going to change operations in
13 a state court and that a federal court would be careful about
14 those things and measure constitutional principles on that
15 plane.

16 I think if we are talking about the Court potentially
17 making a ruling that the regulation that was enunciated by the
18 administrative board may not pass constitutional muster, we
19 ought to see it in that light. We think it does.

20 THE COURT: First of all, I don't think that
21 plaintiffs are asking me to declare the regulations
22 unconstitutional. The regulations, constitutional or not, they
23 are not asking me to touch. The only things that they are
24 asking is, sure, go through your process, but you've got to
25 allow access at an earlier point in time.

1 MR. ADLERSTEIN: When we brought up in regulations,
2 they suggested in their papers that the Court could well
3 declare the regulations to be improper for constitutional
4 purposes. That was an argument that was presented in their
5 papers, and they cited case law to that effect.

6 THE COURT: Okay.

7 MR. ADLERSTEIN: Also, the very fact about will this
8 be limited to New York County, obviously, something that will
9 happen in one county could well affect what happens in all.
10 The consequences in terms of court operations in the New York
11 State courts in the broad sense could be much broader than Mr.
12 Hibsher would suggest. I request that in weighing these
13 various values that have been presented here, your Honor take
14 that into consideration.

15 Lastly, with regard to the Fourth Department case that
16 was cited, I had explained that the statute of limitations
17 seemed to be tolled when it was presented. However, it's not
18 considered to be valid until it is assigned an index number, so
19 it reverts to the date of presentation for statute of
20 limitations purposes, which is not inconsistent with what
21 counsel has argued.

22 THE COURT: I'm sorry. I lost you on that last point.

23 MR. ADLERSTEIN: In other words, the principle about
24 statute of limitations is when the document is presented to the
25 court by the filer, if the courts deem the document to be

1 acceptable and it gets an index number on a later date, it's
2 deemed to be filed on the date that it was first presented. It
3 is dependent on it being found to have been valid when
4 presented by the fact that that document gets an index number.
5 That principle I think is consistent with the case law that Mr.
6 Hibsher has presented.

7 MR. HIBSHER: Your Honor, C.P.L.R. 304(c) says that a
8 document tolls the statute of limitations upon filing. There
9 is no language in that provision that says upon filing and
10 after review by the clerk's office and the affixing of an index
11 number, and there is nothing in the defendant's answering
12 papers that says anything along these lines that certainly
13 provides any authority for that conclusion. That may be their
14 argument, but there is nothing in the law that says that.

15 If I'm a plaintiff who files a case that gets kicked
16 back because I only had the first name or I had five names and
17 then said et al., and they reject it the next day, which is
18 beyond the statute of limitations, you can be certain that I'm
19 going to litigate that issue and create some law on this point,
20 which I do not believe exists. We have looked at it. The only
21 case that came close was the Third Department case that we
22 cited in our brief and that I mentioned before.

23 We are not seeking a declaration that rule 202.5(b)(d)
24 is unconstitutional. That rule does not require the clerk to
25 withhold publication of a filed court complaint to the press.

1 That rule merely requires the clerk to do some processing by
2 the next business day and to notify the filing party.

3 You didn't see a request for a declaration of
4 unconstitutionality as to that rule in our papers because we
5 don't believe that that is necessary. We believe that we are
6 entitled to access upon filing without review, and that may
7 translate into access on the same day that a case is filed.

8 MR. ADLERSTEIN: Your Honor, for C.P.L.R. purposes, if
9 I may, the date of filing is considered to be the date the
10 index number is issued. The regulation says the clerk shall
11 refuse to accept for filing documents that are defective in the
12 ways that are outlined by that regulation. I ask the Court to
13 take that into consideration when dealing with this particular
14 point.

15 THE COURT: Give me five, ten minutes. I'll be out
16 with a decision. Please don't go far.

17 (Recess)

18 THE COURT: It is the Court's conclusion that
19 plaintiff's motion for preliminary injunction will be granted.
20 I find that the clerk may not prevent the press from accessing
21 newly filed documents because of its review and logging
22 procedures.

23 However, the Court will look to the party in the first
24 instance to devise a procedure whereby the press will have
25 timely access to those documents, whether that means constant

1 feed or feed during business hours only or remote feed or
2 otherwise. Again, I will leave it up to the parties in the
3 first instance, as there has been no particular method that's
4 been presented to the Court.

5 Let me first talk about abstention. I did consider
6 this issue very seriously, and I find that abstention not
7 required. The defendant in its papers argued that the Court
8 should abstain because it would require the type of federal
9 court oversight forbidden under the principle of comity
10 articulated in O'Shea v. Littleton and Younger v. Harris.

11 The Ninth Circuit has explained that O'Shea abstention
12 is inappropriate where the requested relief may be achieved
13 without an ongoing intrusion into the state's administration of
14 justice but is appropriate where the relief sought would
15 require the federal court to monitor the substance of
16 individual cases on an ongoing basis to administer its
17 judgment. Moreover, that some additional litigation may later
18 arise to enforce an injunction does not itself justify
19 abstaining from deciding a constitutional claim. That was in
20 the Planet case, reported at 750 F.3d 776, 790-92.

21 As in Planet, this Court finds that the remedy sought
22 by CNS poses little risk of an ongoing federal audit or a major
23 continuing intrusion of the equitable power of the federal
24 courts into the daily conduct of state proceedings. Again,
25 citing to O'Shea, which is reported at 414 U.S. 488. This does

1 not present the level of intrusive relief sought in cases cited
2 by the clerk.

3 Compare Hartford Courant v. Pellegrino, reported at
4 380 F.3d 83, which declined to abstain in case seeking access
5 to docket sheets in Connecticut state court, with Kaufman v.
6 Kaye, reported at 466 F.3d 83, which abstained from
7 entertaining a request that state establish a new system for
8 assigning appeals to justices in the Second Department; and
9 Wallace v. Kern, reported at 481 F.2d 621, reversing a district
10 court's order directing that the clerk place all pro se motions
11 on the court's calendar.

12 With respect to the preliminary injunction, to obtain
13 a preliminary injunction the moving party must demonstrate (1)
14 that it is likely to succeed on the merits, (2) that it is
15 likely to suffer irreparable harm in the absence of preliminary
16 relief, (3) the balance of equities tips in its favor, and (4)
17 an injunction is in the public interest. Citing Winter v.
18 Natural Resources Defense Council, reported at 555 U.S. 7.

19 Even if the moving party can only demonstrate serious
20 questions going to the merits rather than a likelihood of
21 success, the preliminary injunction may nonetheless issue if
22 the costs outweigh the benefits of not granting the injunction.
23 Citing Citigroup Global Markets, Inc. v. VCG Specialty
24 Opportunities Master Fund Limited, reported at 598 F.3d 30.
25 CNS has demonstrated a likelihood of success on the merits.

1 The Second Circuit has held that complaints are
2 judicial records that are subject to a presumption of public
3 access under the First Amendment. Citing Bernstein v.
4 Bernstein Litowitz Berger & Grossmann LLP, reported at 814 F.3d
5 132. In that case the Second Circuit stated that public access
6 to complaints allows the public to understand the activity of
7 the courts, enhances the court system's accountability and
8 legitimacy, and informs the public of matters of public
9 concern.

10 In light of the values which the presumption of access
11 endeavors to promote, a necessary corollary to the presumption
12 is that once found to be appropriate, access should be
13 immediate and contemporaneous. The newsworthiness of a
14 particular story is often fleeting. To delay or postpone
15 disclosure undermines the benefit of public scrutiny and may
16 have the same result as complete suppression. Each passing day
17 may constitute a separate and cognizable infringement of the
18 First Amendment.

19 Citing Grove Fresh Distributors, Inc. v. Everfresh
20 Juice Company, reported at 24 F.3d 893. See also Lugosch v.
21 Pyramid Company of Onondaga, reported at 435 F.3d 110,
22 collecting cases, including Grove Fresh, and noting that our
23 public access cases and those in other circuits emphasize the
24 importance of immediate access where a right of access is
25 found.

1 To overcome the First Amendment right of access, the
2 proponent of sealing must demonstrate that closure is essential
3 to preserve higher values and is narrowly tailored to serve
4 that interest. Broad and general findings and conclusory
5 assertions are insufficient to justify deprivation of public
6 access to the record. Specific on-the-record findings are
7 required. Again citing Bernstein v. Bernstein.

8 State law and court rule provide that paper filings
9 are deemed filed for purposes of the statute of limitations
10 upon their acceptance by the clerk's office or when filed by
11 electronic means at the time of the electronic receipt within
12 the New York State ECF.

13 Upon receipt, the clerk's office reviews the proposed
14 filing for complains with venue, caption, case type, as well as
15 the attorney's signature certification required by court rule.
16 In addition, the clerk's office reviews the papers to ascertain
17 whether they contain materials that, by operation of law, may
18 not be made available to the general public.

19 After this review process is completed, new civil
20 matters are logged with a case or docket number and sent to the
21 clerk's filing room for storage. New case filings are not made
22 available for viewing by the public until this review and
23 log-in process is complete.

24 According to the clerk, the review process is critical
25 to (1) establish a compliance of the filing that the require-

1 ments proposed by state law and court rules, (2) assure
2 attorney compliance with certain of their ethical obligations
3 in commencing legal actions in state courts, and (3) avoid
4 mistakes in filing venue or case type, which can have serious
5 consequences to the statutory protections to the
6 confidentiality of parties in certain proceedings.

7 With respect to this, citing to the Tingling
8 declaration at paragraph 10.

9 The clerk argues that the review process procedures
10 are prescribed to prevent a narrow category of errant pleadings
11 at the outset in order to prevent confusion and waste. In
12 Courthouse News Service v. Planet, the Central District of
13 California considered a similar review policy allegedly
14 designed to protect the confidentiality of those filing
15 complaints and third parties, to ensure information is
16 accurately input, to ensure that proper accounting procedures
17 are followed, and to maintain the integrity of the case file.

18 The court concluded that the clerk failed to meet its
19 burden of demonstrating that its policy of refusing to provide
20 public and press access to newly filed complaints until they
21 are processed is either essential to preserve higher values or
22 is narrowly tailored to serve a substantial government
23 interest. Accordingly, the court entered an order prohibiting
24 the clerk from refusing to make complaints available until
25 after they were processed and directing the clerk to make such

1 complaints accessible to the public and the press in a timely
2 manner from the moment they are received by the Court.

3 Similarly, in Courthouse News Service v. Jackson, the
4 Southern District of Texas considered whether 24- to 72-hour
5 delays in access were constitutional where the delays resulted
6 from the clerk verifying filings for correct case number,
7 proper court, accurate title of document, and proper category
8 before they are made available to the public.

9 The court found that the delay in access to newly
10 filed petitions in this case is not a reasonable limitation on
11 access. Even if it were, the court found that the clerk failed
12 to demonstrate that the 24- to 72-hour delay in access is
13 narrowly tailored to serve such an interest and that no less
14 restrictive means of achieving that interest exists.
15 Accordingly, the court granted CNS's motion for a preliminary
16 injunction and ordered the clerk to give CNS access on the same
17 day petitions are filed.

18 As in Planet and Jackson, this Court finds that the
19 clerk has failed to meet its burden of demonstrating that its
20 policy of refusing to provide the public and press access to
21 newly filed complaints until after they are reviewed and logged
22 is either essential to preserve higher values or is narrowly
23 tailored to serve that interest.

24 In addition, the Court finds that CNS would be
25 irreparably harmed without the injunctive relief. As the court

1 noted in Lugosch and as I indicated earlier, the loss of First
2 Amendment freedoms even for minimal periods of time
3 unquestionably constitute irreparable injury. That is Lugosch at
4 435 F.3d at 127.

5 I further find that the balance of hardships tips in
6 CNS's favor. CNS will be denied its First Amendment right of
7 access to new case-initiating documents unless the Court issues
8 this preliminary injunction while the clerk has alternative
9 constitutional ways to address its administrative concerns.

10 I note in this regard that this injunction in no way
11 restricts or comments on the regulations that are in place for
12 the clerk of the court to review and accept for filing or
13 accept for an index number the complaints when they are filed.

14 Finally, I find that injunctive relief would serve the
15 public interest. There is, of course, an important First
16 Amendment interest in providing timely access to new case-
17 initiating documents.

18 With respect to the bond, I order the plaintiff to
19 post a bond in the amount of \$5,000 by no later than Tuesday of
20 next week. What date is next Tuesday, Ms. Rivera?

21 MR. ADLERSTEIN: The 20th, your Honor.

22 THE COURT: By Tuesday, December 20th, 5:00 p.m.

23 That constitutes the decision of the Court.

24 Mr. Hibsher, anything further?

25 MR. HIBSHER: No, your Honor. Thank you.

1 THE COURT: Mr. Adlerstein?

2 MR. ADLERSTEIN: Your Honor, the one thing I wonder
3 about your Honor's ruling is how immediate it is. The county
4 clerk is going to need to come up with a plan in combination
5 with the court system in order to implement what your Honor has
6 ordered. I would suggest that a time period be prescribed.

7 THE COURT: I'm happy to do that. Mr. Hibsher?

8 MR. HIBSHER: Your Honor, I don't have a position on
9 that. I think if your Honor ordered that this preliminary
10 injunction would take effect in 20 days, that would be
11 adequate. I don't know what the plan is that Mr. Adlerstein is
12 referring to.

13 But I can say, your Honor, that after the preliminary
14 injunction was issued in the Jackson case, the parties met and
15 conferred and they came to an agreed-upon permanent injunction.
16 As you know from our papers, I'm delighted to sit down with Mr.
17 Adlerstein to achieve that end if at all possible.

18 MR. ADLERSTEIN: Your Honor, we have the holidays
19 coming up. If we are talking about some kind of a
20 technological solution here, which is one of the possibilities
21 I think that was thrown out, that takes a little bit of time to
22 set up. I would request that we have until the beginning of
23 February to confer and come up with a plan.

24 THE COURT: Mr. Hibsher?

25 MR. HIBSHER: If Mr. Adlerstein is making a

1 representation that technological facilities to provide the
2 kind of access that we described in our papers and in our
3 argument will in fact occur by the beginning of February, we
4 would be agreeable to that.

5 MR. ADLERSTEIN: I don't know if they can occur, but I
6 think we can come up with a plan and define what is to be done.
7 We are operating here without knowing for sure exactly how this
8 is going to be set up. I think the county clerk needs some
9 time in order to do that.

10 THE COURT: Why don't we set this down for a status
11 conference -- what makes sense? -- first week in January.
12 Between now and then I expect that the parties will have met
13 and conferred and come up with a plan going forward. If it
14 appears that there are going to be issues, tee them up as best
15 as you can and bring them to my attention.

16 MR. ADLERSTEIN: Your Honor, could we make it the
17 second week? The reason is the holidays.

18 THE COURT: I understand. Ms. Rivera?

19 THE CLERK: January 12, 2017, at 12:30 p.m.

20 THE COURT: Okay? Is there anything else?

21 MR. HIBSHER: No, your Honor.

22 THE COURT: In that event, we are adjourned. Happy
23 holidays to everyone.

24 (Adjourned)

25

Exhibit 21

JS-6

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

Courthouse News Service,
Plaintiff,
vs.
Michael Planet, in his official capacity
as Court Executive Officer/Clerk of the
Ventura County Superior Court,
Defendant.

Case No.: CV 11-8083-DMG (FFMx)

**AMENDED JUDGMENT FOR
DECLARATORY RELIEF AND
PERMANENT INJUNCTION
[263]**

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This action came before the Court on the Amended Complaint of Plaintiff Courthouse News Service (“CNS”) for Injunctive and Declaratory Relief under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution against Defendant Michael Planet, in his official capacity as Court Executive Officer and Clerk of the Superior Court in and for the County of Ventura, California.

Following the Ninth Circuit Court of Appeals’ ruling in *Courthouse News Service v. Planet*, 947 F.3d 581 (9th Cir. 2020) (“*Planet III*”), which affirmed in part and reversed in part the Judgment for Declaratory Relief and Permanent Injunction In Favor of Plaintiff Courthouse News Service Against Defendant Michael Planet [Doc. # 199], and pursuant to the mandate received by this Court,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that, pursuant to Federal Rule of Civil Procedure 58, Judgment be entered in this action in favor of Plaintiff CNS and against Defendant Planet as follows:

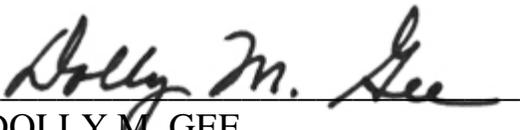
- 1. On CNS’s Prayer for Declaratory Relief, it is ORDERED, ADJUDGED and DECREED that:
 - a. There is a qualified First Amendment right of timely access to newly filed civil complaints, including their associated exhibits.
 - b. This qualified right of timely access attaches when new complaints are received by a court, rather than after they are “processed” -- i.e., rather than after the performance of administrative tasks that follow the court’s receipt of a new complaint.
 - c. This qualified right of timely access attaches on receipt regardless of whether courts use paper filing or e-filing systems.
 - d. Planet’s policy prior to June 18, 2014 of requiring that newly filed complaints and their associated exhibits be “processed” prior to providing the press and public with access to those complaints violates CNS’s qualified First Amendment right of timely access to newly filed complaints and their associated exhibits for the reasons stated in *Planet III*.

1 e. Planet’s policy, implemented on June 18, 2014, of scanning new
2 civil complaints and making the scans available on public computer terminals does
3 not violate CNS’s qualified First Amendment right of timely access to newly filed
4 complaints and their associated exhibits for the reasons stated in *Planet III*.

5 2. On CNS’s Prayer for Injunctive Relief, Planet is hereby permanently
6 enjoined from refusing (a) to make newly filed unlimited civil complaints and their
7 associated exhibits available to the public and press until after such complaints and
8 associated exhibits are “processed,” regardless of whether such complaints are filed
9 in paper form or e-filed, and (b) to make such complaints and exhibits accessible to
10 the public and press in a timely manner from the moment they are received by the
11 court, except in those instances in which the filing party has designated the
12 complaint as confidential by law or properly moved to place the complaint under
13 seal.

14 3. On CNS’s Prayer for Costs and Attorneys’ Fees, and pursuant to the
15 Ninth Circuit’s Order of June 30, 2020 [Doc. # 255], CNS is the prevailing party in
16 this action. Pursuant to Federal Rule of Civil Procedure 54(d), the cost award to
17 CNS entered on August 2, 2016, in the amount of \$20,730.81 [Doc. # 204], is
18 reinstated. Pursuant to 42 U.S.C. § 1988, CNS is further awarded its non-taxable
19 costs and attorneys’ fees in an amount to be determined by the Court pursuant to
20 Federal Rule of Civil Procedure 54(d)(2) and Local Rules 54-10 and 54-11, which
21 shall be filed within 14 days of the date of entry of this Judgment.

22 DATED: January 26, 2021


DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

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Exhibit 22

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

2021 NOV 19 PM 5:08

CLERK

BY LAW
DEPUTY CLERK

COURTHOUSE NEWS SERVICE;)
VERMONT PRESS ASSOCIATION, INC.;)
NEW ENGLAND FIRST AMENDMENT)
COALITION; GRAY MEDIA GROUP, INC.)
d/b/a *WCAX-TV*; GANNETT VERMONT)
PUBLISHING, INC. d/b/a *Burlington Free*)
Press; SAMPLE NEWS GROUP, LLC d/b/a)
Barre-Montpelier Times Argus and Rutland)
Herald; VTDigger, a project of the)
VERMONT JOURNALISM TRUST, LTD.;)
VERMONT COMMUNITY NEWSPAPER)
GROUP, LLC d/b/a *Stowe Reporter,*)
News & Citizen, South Burlington Other)
Paper, Shelburne News, and The Citizen; and)
DA CAPO PUBLISHING, INC.)
d/b/a *Seven Days*,)

Plaintiffs,)

v.)

Case No. 2:21-cv-000132

PATRICIA GABEL, in her official capacity as)
the State Court Administrator of the Supreme)
Court of the State of Vermont; AMANDA)
STITES, in her official capacity as Clerk of)
Court for Addison, Bennington, and Rutland)
Counties; MARGARET VILLENEUVE, in her)
official capacity as Clerk of Court for)
Caledonia, Essex, Orleans, and Washington)
Counties; CHRISTINE BROCK, in her official)
capacity as Clerk of Court for Chittenden)
County; GAYE PAQUETTE, in her official)
capacity as Clerk of Court for Franklin, Grand)
Isle, and Lamoille Counties; and ANNE)
DAMONE, in her official capacity as Clerk of)
Court for Orange, Windham, and Windsor)
Counties,)

Defendants.)

OPINION AND ORDER DENYING AS MOOT PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, DENYING DEFENDANTS' MOTION TO DISMISS, GRANTING IN PART AND DENYING IN PART PLAINTIFFS' REQUEST FOR PERMANENT INJUNCTIVE RELIEF, AND DENYING PLAINTIFFS' REQUEST FOR DECLARATORY RELIEF
(Docs. 16, 26, & 43)

Plaintiffs Courthouse News Service; Vermont Press Association, Inc.; New England First Amendment Coalition; Gray Media Group, Inc. d/b/a WCAX-TV; Gannett Vermont Publishing, Inc. d/b/a Burlington Free Press; Sample News Group, LLC d/b/a Barre-Montpelier Times Argus and Rutland Herald; VTDigger, a project of the Vermont Journalism Trust, Ltd.; Vermont Community Newspaper Group, LLC d/b/a Stowe Reporter, News & Citizen, South Burlington Other Paper, Shelburne News, and The Citizen; and Da Capo Publishing, Inc. d/b/a Seven Days (collectively, "Plaintiffs") bring this action under 42 U.S.C. § 1983 against Defendants Patricia Gabel, in her official capacity as State Court Administrator of the Supreme Court of the State of Vermont; Amanda Stites, in her official capacity as Clerk of Court for Addison, Bennington, and Rutland Counties; Margaret Villeneuve, in her official capacity as Clerk of Court for Caledonia, Essex, Orleans, and Washington Counties; Christine Brock, in her official capacity as Clerk of Court for Chittenden County; Gaye Paquette, in her official capacity as Clerk of Court for Franklin, Grand Isle, and Lamoille Counties; and Anne Damone, in her official capacity as Clerk of Court for Orange, Windham, and Windsor Counties (collectively, "Defendants").

Plaintiffs allege that Defendants' failure to make newly filed civil complaints available to the public prior to Defendants' pre-access review process violates Plaintiffs' First Amendment rights. Plaintiffs seek injunctive and declaratory relief and an award of attorneys' fees under 42 U.S.C. § 1988.

I. Procedural Background.

Plaintiffs filed a complaint for injunctive and declaratory relief on May 20, 2021 and amended it on June 7, 2021. (Docs. 1 & 16.) The parties filed a Stipulation and Proposed Order regarding a briefing schedule for a motion for preliminary injunction by

Plaintiffs and a motion to dismiss by Defendants, which the court adopted on July 8, 2021. (Doc. 25.) Plaintiffs moved for a preliminary injunction on July 12, 2021, seeking to enjoin Defendants from denying Plaintiffs access to newly filed civil complaints until after they were processed pursuant to the rules promulgated by the Vermont Supreme Court. (Doc. 26.) On August 18, 2021, Defendants filed a motion to dismiss (Doc. 43) and opposed Plaintiffs' motion for a preliminary injunction (Doc. 44). On September 24, 2021, Plaintiffs filed a reply in support of their motion for a preliminary injunction (Doc. 50) and a response in opposition to Defendants' motion to dismiss (Doc. 51). Defendants replied in support of their motion to dismiss on October 15, 2021. (Doc. 52.)

Pursuant to Federal Rule of Civil Procedure 65(a)(2), with the parties' consent, the court consolidated the hearing on the preliminary injunction with a trial on the merits. The consolidated hearing and trial were held on October 25, 2021. The parties stipulated to a trial without live witnesses, asking the court to make its factual findings based on the materials they submitted. Because there has been a trial on the merits, Plaintiffs' motion for preliminary injunction (Doc. 26) is DENIED AS MOOT.

On October 29, 2021, Defendants moved for leave to file a supplemental submission, which Plaintiffs opposed as inconsistent with the parties' stipulation.¹ The court granted leave in part "to the extent Defendants present new evidence regarding when newly filed complaints that are not made publicly available on the date of filing become accessible[.]" and denied it in part "to the extent it presents new arguments based on case law which predates the trial." (Doc. 60.) Plaintiffs responded to Defendants' supplemental submission on November 5, 2021, at which point the court took the pending motions under advisement. (Doc. 61.)

Plaintiffs are represented by William Hibsher, Esq., Jonathan E. Ginsberg, Esq., and Robert B. Hemley, Esq. Defendants are represented by Assistant Attorney General David Boyd.

¹ "[T]he parties' agreement to consolidate without live witnesses means the Court can reach the factual findings it thinks [are] appropriate based on the record before it[.]" (Doc. 57 at 55.)

II. Findings of Fact.

Pursuant to Federal Rule of Civil Procedure 52(a)(1) and the parties' stipulation, the court makes the following findings of facts.

A. The Parties.

1. With the exception of New England First Amendment Coalition, a regional group interested in protecting First Amendment freedoms, Plaintiffs are media companies that report on court proceedings in the Vermont Superior Courts and elsewhere.
2. Plaintiff Courthouse News Service ("CNS") is a nationwide news service which employs approximately 240 people, most of them editors and reporters, covering state and federal trial and appellate courts in all fifty states in the United States. It currently employs reporters who cover the state and federal trial and appellate courts of Vermont.
3. Plaintiff CNS offers a variety of publications, including its "New Litigation Reports," which contain original, staff-written summaries of significant new civil complaints. New Litigation Reports focus on general jurisdiction civil complaints against business institutions, public entities, prominent individuals, or other civil actions of interest to CNS subscribers. New Litigation Reports do not cover criminal or family law matters, nor do they include residential foreclosures or probate filings.
4. Among Plaintiff CNS's other publications are its two print newsletters and an electronic "Daily Brief" which cover published nationwide appellate rulings, including all U.S. Supreme Court and federal circuit decisions, as well as significant rulings from federal district courts, including the District of Vermont. In addition, Plaintiff CNS publishes a website featuring news reports and commentary, which functions much like a daily newspaper.
5. To prepare New Litigation Reports and identify new cases that may warrant coverage, Plaintiff CNS's reporters have traditionally visited their assigned courts to review all newly filed complaints in order to determine which ones are

newsworthy. However, as the federal courts and an increasing number of state courts are making court records available online, and in light of the ongoing COVID-19 pandemic, Plaintiff CNS also covers courts remotely through the Internet.

6. Reporters for the other media Plaintiffs also review newly filed civil complaints to identify cases that may be newsworthy. Any delay in the ability of a reporter to obtain and review a newly filed complaint necessarily creates a delay in the ability to inform subscribers and the public of the factual and legal allegations in those complaints.
7. Defendants are state officials responsible for the administration of the Vermont Superior Courts. The Vermont Superior Courts are comprised of fourteen county-based units.²
8. Vermont Superior Courts are the trial courts that hear the majority of civil actions.
9. Vermont Superior Court Clerks are responsible for, among other things, the administration of civil court records and the provision of public access to those records.

B. Transition to Odyssey Electronic Filings.

10. From April 20, 2017 to March 2020, Plaintiffs were able to review newly filed paper complaints, including, in some cases, complaints that had yet to be docketed in the Vermont Superior Courts. Before providing complaints to the press or the public, court staff would complete a “quick file audit” to confirm the absence of confidential information or remove previously identified confidential information. (Doc. 50-3 at 3.)
11. In March 2020, the Vermont Judiciary implemented a new electronic case management system “Odyssey,” which is hosted by a third-party vendor, Tyler Technologies, Inc.

² Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Grand Isle, Lamoille, Orange, Orleans, Rutland, Washington, Windham, and Windsor.

12. The Vermont Superior Courts transitioned to Odyssey's electronic filing system in three phases. The Orange, Windham, and Windsor units began the transition to electronic records in March 2020 and began accepting electronic filings in April 2020. The Addison, Bennington, Chittenden, and Rutland units began the transition to electronic records in September 2020 and began accepting electronic filings in October 2020. The Caledonia, Essex, Franklin, Grand Isle, Lamoille, Orleans, and Washington units began the transition to electronic records in February 2021 and began accepting electronic filings on March 15, 2021.
13. As of March 15, 2021, with limited exceptions, all documents filed in the Vermont Superior Courts are required to be electronically filed. *See* 2020 Vermont Rules for Electronic Filing Rule 3(a).
14. Public access to filings is available only at designated display terminals located in courthouses and judiciary offices during regular business hours. Each unit must have at least one public access terminal. Remote access to publicly accessible case records, except for criminal, family, or probate records, may be provided at the discretion of the Court Administrator.
15. During the rollout of Odyssey, the Vermont Superior Courts experienced COVID-19-related challenges including work restrictions, equipment shortages, training delays, and the reallocation of information technology professionals to tasks related to remote connectivity rather than electronic filing.
16. The Vermont Superior Courts continue to suffer a high employee attrition rate and continue to experience difficulties in recruiting necessary staff to assist in Odyssey's implementation as well as other court-related tasks.

C. The Rules Authorizing the Pre-Access Review Process.

17. The 2020 Vermont Rules for Electronic Filing ("V.R.E.F.") and Vermont Rules for Public Access to Court Records ("V.R.P.A.C.R.") control the process for electronic filing in the Vermont Superior Courts.
18. Under V.R.E.F. 5(b), the electronic filer must:

- (1) prepare and format the e filing in accordance with Rule 5(f) and (g), and Rule 7;
- (2) sign the e filing as provided in Rule 9;
- (3) provide a mailing address and email address on the documents electronically filed;
- (4) satisfy payment requirements of Rule 10;
- (5) take any actions required under Rule 7(a)(1) of V.R.P.A.C.R.;
- (6) certify that each document filed complies with V.R.P.A.C.R.; and
- (7) for initial filings, provide service contacts that will enable post-commencement service on the e filer and maintain updated contacts.

19. Under V.R.E.F. 5(d), Vermont Superior Court staff are required to perform the following processing:

- (1) Court Staff Review. Court staff will review all electronic filings for compliance with these rules and Rule 7(a)(1) of V.R.P.A.C.R.
- (2) Accepting or Rejecting a Filing. Court staff will electronically notify the e filer either that the e filing has been accepted or that it cannot be accepted until specified actions required under these rules have been taken.
- (3) Correcting an eFiling. An e filer may submit a corrected e filing within seven days after receiving the notification if the e filer follows the instructions for e filing a correction on the electronic filing system. The court may extend the time for correction for good cause. Court staff will accept a corrected e filing if all requirements of those rules and the instructions for correction have been met.
- (4) Filing Date. When an e filing has been accepted, the date and time of e filing for all purposes under the applicable rules of procedure are the date and time that the initial e filing was submitted if the corrected filing complied with the time limits in (d)(3).
- (5) Assigning Case Number. The electronic filing system will provide a case number for a new case filing that has been accepted in the acceptance notification. The assigned case number must appear on all subsequent e filings pertaining to the case.

20. Under V.R.P.A.C.R. 6(b), the public “does not have access” to certain court records, including the following:

- (1) Records which by statute, court rule, or other source of law are designated confidential or to which access is prohibited by a similar

term. An appendix to this rule lists all statutes and court rules containing a prohibition or restriction on public access, existing on the date of promulgation of this rule, and a summary of the extent and terms of the prohibition or restriction. Annually before January 1 of each year the Court Administrator will update the list in the appendix.

...

- (14) The following personally identifying data elements filed in a case record that is otherwise publicly accessible under these rules:
- (i) A social security number;
 - (ii) A passport number;
 - (iii) A taxpayer identification number;
 - (iv) A financial account number, including a credit or debit card number; or
 - (v) In a criminal case, the name of a child alleged to be a victim. In lieu of a social security, passport, taxpayer identification or financial account number, the filer may include the last four digits of that number. In lieu of the name of a child victim, the filer may include the initials of the first and last name of the child.

21. Although none of the Vermont Judiciary's electronic filing rules clearly state that the public shall not have access to a newly filed complaint until a pre-access review process is completed, Defendants contend that the rules, when read collectively, authorize a process which entitles the Vermont Superior Courts to withhold access to newly filed complaints until a manual review for certain information takes place. The rules impose no deadlines or other temporal restraints on how long the pre-access review process may take, how it is staffed, or impose any consequences if the pre-access review process is unduly delayed.

22. Plaintiffs contend that as of July 1, 2021, Vermont was the only state in the nation that requires court clerks to independently review electronic court filings in a non-public queue for confidential information before those filings are accessible to the public. Defendants offered no evidence to rebut that contention.

D. Protection of Confidential Records and Consequences of Noncompliance.

23. V.R.P.A.C.R. 2(e) states: “To the extent reasonably practicable, restriction of access to confidential information is implemented in a manner that does not restrict access to any portion of the record that is not confidential.”

24. V.R.P.A.C.R. 7(a)(1) imposes the following responsibilities on filers:

- (A) In General. It is the responsibility of the filer of a case record, whether in physical or electronic form, to determine whether all or part of the record being filed is not publicly accessible.
- (B) Certifying Compliance. The filer must certify that the filer has reviewed the case record, and that the filing specifies the nonpublic records and protects those records from disclosure to the public consistent with these rules. The certificate must detail any actions taken to comply with these rules and the reasons for the actions.
- (C) Separating Nonpublic Records in Public Files. If the record is not filed in a type of case that is closed to the public by statute, the filer must separate the part of the record that is subject to public access from the part that is not subject to public access by redaction or other similar method. The filer may separately file the omitted or redacted part of the record or may additionally file a separate complete record.
- (D) Identifying Nonpublic Records. The filer of a record that is not publicly accessible under these rules or under statute must identify the record as not publicly accessible at the time of filing. After acceptance of the filing, court staff will place that document, or any other document not publicly accessible, in the section of the electronic or physical file of the case that is not publicly accessible.

25. V.R.P.A.C.R. 7(a)(3) and (4) set forth the following court staff responsibilities and powers:

- (3) Responsibility of Court Staff When Document is Filed. The Court Administrator will establish the procedures for staff to discharge the record custodian's responsibility to provide public and special access to records as provided in these rules and to implement exceptions to public access established by these rules and by statute. If staff determine that a filing does not fully comply with these rules, including with respect to one or more personal identifiers, staff must take an action specified in paragraph (4). If a court staff person or judicial officer discovers that a case record that is publicly accessible

may be in that status in violation of these rules, the staff or officer must act to temporarily restrict public access to the record and notify the Court Administrator. If the Court Administrator determines that public access to the record is not authorized under these rules, the Court Administrator will direct that the record be removed from public access. The Court Administrator may direct that the record be redacted or otherwise modified to allow public access to parts that are publicly accessible under these rules. If the record was filed by or on behalf of a party or another person who is not court staff or a judicial officer, the Court Administrator may direct that the filer make the record compliant with these rules within a specified time. If the filer provides a compliant filing on or before the specified time limit, the filing date will be the date of the original filing. Otherwise, the filing date will be the date of the compliant filing. The Court Administrator may appoint a designee to discharge the Court Administrator’s responsibility under this rule.

- (4) Actions When a Filing is Noncompliant with Rules.
 - (A) The staff person who reviews the filing may:
 - (i) Change the public-access status or redact the filing to comply with these rules; or
 - (ii) Reject the filing until it is made compliant with these rules and specify the time limit to do so.
 - (B) In addition, the staff person may refer the matter to an assigned judge who, after notice and hearing, may:
 - (i) Impose any sanction authorized by V.R.C.P. 11(c), regardless of whether that rule is otherwise applicable to the proceeding involved;
 - (ii) Reference the matter to the Professional Responsibility Program if the court finds that there is probable cause to conclude that a lawyer has violated Rule 3.4(c) of the Rules of Professional Conduct; and/or
 - (iii) If the court finds a violation of these rules occurred and excusable neglect is not present, order that the date of the corrected filing is the date of filing for all purposes; or remedial action appropriate to the circumstances.

26. “For case records, the rules recognize that it is the responsibility of both filers of case records and the Judiciary to protect confidentiality and privacy where public

access is restricted by such requirements.” V.R.P.A.C.R. 3(b). The Judiciary is required to “take reasonable steps to comply with these rules.” *Id.* A non-compliant filer is subject to penalties set forth in V.R.P.A.C.R. 7(a)(4), including sanctions and referral to the bar for violation of the Rules of Professional Conduct.

27. From the transition to electronic filing through September 3, 2021, the Vermont Superior Courts rejected sixty-six proposed filings across all filing types under rejection code RR11—Public Documents Containing Nonpublic Information and seventy-two additional proposed filings across all filing types with comments indicating rejection was related to nonpublic information. Nineteen of those were civil filings and four were listed as confidential by the filer in the Filing Code Description. Of those four, one was an unredacted check and three were exhibits to two civil complaints. (Doc. 50-3 at 4-5.)

28. Defendants’ pre-access review for confidential information has thus led to a rejection of three exhibits related to two out of 4,156 newly filed civil complaints during Odyssey’s implementation. This means that the pre-access review process for confidential information identified a violation in only 0.048% of newly filed complaints.

E. Delays Occasioned by the Pre-Access Review Process.

29. After they are electronically filed in the Vermont Superior Courts, newly filed complaints are placed in an electronic review queue which is not accessible to the public. A clerk checks for a signature, unredacted personally identifying information exempt from disclosure, and comments left by the filer. The clerk verifies that the complaint is correctly designated as public, confidential, or sealed; that the right filing codes are selected; and that the filing fee and case type selected are correct. The clerk then accepts or rejects the filing. Accepted nonconfidential filings become available for public viewing only after this review process is complete.

30. The pre-access review process for new civil filings typically takes approximately twenty minutes to complete. Odyssey’s software performs a verification process

that duplicates the clerk's pre-access review except for the review for confidential information, which must be undertaken manually.

31. Because Defendants provide no evidence that their ministerial review of a newly filed complaint (for signature, fee payment, coding, etc.) takes twenty minutes, nor would it be reasonable to make such a claim, it appears that the majority of the pre-access review process is devoted to a manual review of the complaint for confidential information. This is also the only portion of the pre-access review process which is not duplicated by Odyssey's software.
32. If a filing is accepted, it becomes available electronically for public viewing upon acceptance.
33. But for the Vermont Superior Courts' pre-access review process, newly filed complaints could be made accessible to the public immediately upon filing.
34. Since the implementation of Odyssey, delays in access to newly filed complaints have been pervasive throughout the Vermont Superior Courts. Of the 4,156 newly filed civil complaints filed in the fourteen Vermont Superior Courts from the first implementation of Odyssey until August 6, 2021 (the "Designated Period"), on average:
 - a. 54.8% were made available to the public on the same day as filing;
 - b. 22.6% were made available to the public one day after filing;
 - c. 4.6% were made available to the public two days after filing;
 - d. 6.7% were made available to the public three days after filing; and
 - e. 11.4% were made available to the public four or more days after filing.
35. On a weekly basis, the percentage of newly filed civil complaints made available on the same day as filing ranged, on average, from a low of 0% for weeks starting May 3, 2020; May 17, 2020; and October 4, 2020, to a high of 91.7% for the week starting November 22, 2020.
36. Among the fourteen Vermont Superior Courts during the Designated Period, the percentage of newly filed civil complaints made available on the same day as filing ranged from a low of 3.8% to a high of 81.6%. Specifically:

- a. In the Addison Unit, 33.9% were made available to the public on the same day as filing;
- b. In the Bennington Unit, 51.0% were made available to the public on the same day as filing;
- c. In the Caledonia Unit, 11.1% were made available to the public on the same day as filing;
- d. In the Chittenden Unit, 61.1% were made available to the public on the same day as filing;
- e. In the Essex Unit, 3.8% were made available to the public on the same day as filing;
- f. In the Franklin Unit, 58.2% were made available to the public on the same day as filing;
- g. In the Grand Isle Unit, 53.1% were made available to the public on the same day as filing;
- h. In the Lamoille Unit, 50.7% were made available to the public on the same day as filing;
- i. In the Orange Unit, 39.5% were made available to the public on the same day as filing;
- j. In the Orleans Unit, 28.0% were made available to the public on the same day as filing;
- k. In the Rutland Unit, 64.9% were made available to the public on the same day as filing;
- l. In the Washington Unit, 67.6% were made available to the public on the same day as filing;
- m. In the Windham Unit, 81.6% were made available to the public on the same day as filing; and
- n. In the Windsor Unit, 37.8% were made available to the public on the same day as filing.

37. The Vermont Superior Courts' pre-access review process results in delay that varies significantly between court units and within each court unit:

Availability for Each of the 14 Vermont Superior Court Units - In Calendar Days

Location	Same Day Availability	Next Day Availability	2+ Day Availability	Total New Complaints
Addison Unit	74%	26%	0%	35
Bennington Unit	43%	23%	35%	40
Caledonia Unit	87%	10%	3%	30
Chittenden Unit	76%	17%	7%	167
Essex Unit	50%	50%	0%	4
Franklin Unit	69%	26%	5%	62
Grand Isle Unit	50%	25%	25%	8
Lamoille Unit	58%	15%	27%	48
Orange Unit	63%	26%	11%	27
Orleans Unit	72%	21%	7%	29
Rutland Unit	67%	28%	6%	90
Washington Unit	62%	19%	19%	104
Windham Unit	71%	9%	20%	70
Windsor Unit	54%	26%	20%	54
All Units	67%	20%	13%	768

Availability for Each of the 14 Vermont Superior Court Units - In Work Days

Location	Same Day Availability	Next Day Availability	2+ Day Availability	Total New Complaints
Addison Unit	83%	17%	0%	35
Bennington Unit	50%	35%	15%	40
Caledonia Unit	90%	10%	0%	30
Chittenden Unit	84%	14%	1%	167
Essex Unit	75%	25%	0%	4
Franklin Unit	74%	26%	0%	62
Grand Isle Unit	63%	38%	0%	8
Lamoille Unit	83%	10%	6%	48
Orange Unit	81%	15%	4%	27
Orleans Unit	79%	21%	0%	29
Rutland Unit	70%	28%	2%	90
Washington Unit	58%	31%	12%	104
Windham Unit	76%	10%	14%	70
Windsor Unit	61%	30%	9%	54
All Units	74%	21%	5%	768

F. The Centralization Process.

38. The Vermont Superior Courts are in the process of centralizing the pre-access review process on a division-by-division basis as part of a pilot approach that will be evaluated and adjusted as necessary before becoming permanent. Centralized review for five Vermont Superior Court units began in July of 2021 but staffing constraints have not allowed for the other units to be centralized. Defendants' goal is to have the civil pilot program cover the remaining units in October of 2021 and make it permanent by the end of 2021. (Docs. 44-14 and 55.)

G. Whether Media Coverage has been Impaired by Defendants’ Pre-access Review Process and Whether Plaintiffs are Entitled to Special Access.

39. Defendants argue that Plaintiffs fail to prove that their ability to provide timely coverage of court cases has been impaired by Defendants’ pre-access review process. They ask the court to use Plaintiff CNS’s publication dates to determine whether there has been unconstitutional delay. Not only does this approach reflect a misallocation of the burden of proof, Defendants’ evidence in support of this argument is unreliable. Many factors contribute to when Plaintiff CNS provides media coverage of a newly filed complaint. To measure delay by publication dates thus fails to yield an accurate determination of when a newly filed complaint becomes accessible to the public.
40. Plaintiffs’ suggestion that Defendants create a media queue that affords the media preferential access is equally misplaced. Although Plaintiffs point to states which use the same technology as Odyssey that have chosen to implement a media queue,³ Plaintiffs’ First Amendment right of access does not exceed that of the general public. A media queue would thus not provide an adequate remedy for any unconstitutional delay. *See Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 773-74 (1985) (White, J., concurring) (observing that the First Amendment does not guarantee the press a constitutional right and special access to information not available to the public generally); *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 326 n.5 (4th Cir. 2021) (“The media’s rights of access are co-extensive with and do not exceed those rights of members of the public in general.”) (internal quotation marks omitted).

³ “In California, Georgia, and Nevada, for example, courts which use the same electronic filing and case management system [as Odyssey], based on software developed by Tyler Technologies, Inc., which is also Vermont’s vendor, have provided timely access to CNS, and other credentialed members of the press, through a ‘Press Review Queue’ feature that allows CNS, at no cost to the court, to view newly filed complaints as soon as they are received by the court and without waiting for court staff to process them.” (Doc. 61 at 8 n.6) (internal quotation marks omitted) (alteration accepted).

III. Conclusions of Law and Analysis.

A. Whether Plaintiffs Have a First Amendment Right of Access to Newly Filed Civil Complaints.

“[I]t is well established that the public and the press have a ‘qualified First Amendment right to attend judicial proceedings and to access certain judicial documents.’” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (quoting *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 91 (2d Cir. 2004)); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980) (recognizing a right of access “implicit in the guarantees of the First Amendment”).⁴ “[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.” *Id.* at 575-76 (internal quotation marks omitted) (quoting *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978)).

The Second Circuit has recognized a First Amendment right of public access “to civil trials and to their related proceedings and records.” *New York Civ. Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 298 (2d Cir. 2012) (collecting cases). “[T]he need for public access . . . is grounded in the ‘need for federal courts . . . to have a measure of accountability and for the public to have confidence in the administration of justice.’” *Newsday LLC v. Cnty. of Nassau*, 730 F.3d 156, 164 (2d Cir. 2013) (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)).

[The Second Circuit has] applied two different approaches when deciding whether the First Amendment right applies to particular material. The “experience and logic” approach applies to both judicial proceedings and documents, and asks “both whether the documents 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

⁴ There is also a common law “general right to inspect and copy public records and documents, including judicial records and documents.” *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 142 (2d Cir. 2016) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). Plaintiffs allege only a violation of a First Amendment right of access, which provides more “substantive protection to the interests of the press and the public” than the common law. *Lugosch*, 435 F.3d at 124 (quoting *Rushford v. New Yorker Mag., Inc.*, 846 F.2d 249, 253 (4th Cir. 1988)).

question.” The second approach—which we adopt only when analyzing judicial documents related to judicial proceedings covered by the First Amendment right—asks whether the documents at issue “are derived from or are a necessary corollary of the capacity to attend the relevant proceedings.”

Id. (citations omitted).

In *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, the Second Circuit applied the “experience and logic” approach and found a presumptive First Amendment right of access to civil complaints. 814 F.3d 132, 141 (2d Cir. 2016). In so ruling, the Second Circuit noted that when a complaint is withheld, it “leaves the public unaware that a claim has been leveled and that state power has been invoked—and public resources spent—in an effort to resolve the dispute.” *Id.* The public right of access generally attaches when a newly filed civil complaint is received by a court. *See Lugosch*, 435 F.3d at 126 (emphasizing “the importance of immediate access where a right to access is found[]”).

Defendants contend Plaintiffs seek instantaneous access to newly filed complaints akin to allowing a reporter to go behind the clerk’s desk and open a Vermont Superior Court’s mail. This comparison is nonsensical in the context of an electronic filing system. In *Odyssey*, there is no opening of an envelope or other physical handling that would make access upon filing impracticable. Instead, the only obstacle to immediate access to newly filed complaints is Defendants’ pre-access review process. In effect, Defendants purposefully withhold immediate access by placing newly filed complaints in a review queue where they may be reviewed in a matter of minutes, hours, or days with virtually no guarantee as to when they will become accessible to the public. The delay differs significantly among and within the fourteen Vermont Superior Courts, varies day by day, and occurs with no predictability. It is Defendants’ placement of newly filed complaints in this queue which must be justified under the First Amendment.

Because Plaintiffs have identified a First Amendment right to access to newly filed complaints, Defendants’ motion to dismiss the Amended Complaint under Rule 12(b)(6) for failure to state a plausible claim for relief must be DENIED.

B. Whether the Case Should Be Dismissed as Moot.

Defendants argue the Complaint is partially moot and will soon be completely moot because the Vermont Superior Courts are centralizing their review process for civil filings which will expedite review. Defendants anticipate centralization will be made permanent by the end of 2021. By Defendants' own admission, "[t]hese goals, of course, depend on the judiciary being able to fill all of the necessary positions, which it is working to do." (Doc. 44 at 32.)

"Dismissal of a case for lack of subject matter jurisdiction under Rule 12(b)(1) is proper when the district court lacks the statutory or constitutional power to adjudicate it." *Doyle v. Midland Credit Mgmt., Inc.*, 722 F.3d 78, 80 (2d Cir. 2013) (quoting *Ford v. D.C. 37 Union Local 1549*, 579 F.3d 187, 188 (2d Cir. 2009)). "When a case becomes moot, the federal courts 'lack[] subject matter jurisdiction over the action.'" *Fox v. Bd. of Trs. of State Univ. of N.Y.*, 42 F.3d 135, 140 (2d Cir. 1994) (alteration in original) (quoting *N.Y.C. Emps.' Ret. Sys. v. Dole Food Co.*, 969 F.2d 1430, 1433 (2d Cir. 1992)).

"[T]he party asserting subject matter jurisdiction 'has the burden of proving by a preponderance of the evidence that it exists.'" *Tandon v. Captain's Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 243 (2d Cir. 2014) (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)). "In resolving a motion to dismiss under Rule 12(b)(1), the district court must take all uncontroverted facts in the complaint (or petition) as true, and draw all reasonable inferences in favor of the party asserting jurisdiction." *Id.* "[W]here jurisdictional facts are placed in dispute, the court has the power and obligation to decide issues of fact by reference to evidence outside the pleadings." *Id.* (quoting *APWU v. Potter*, 343 F.3d 619, 627 (2d Cir. 2003)).

"[A] defendant cannot automatically moot a case simply by ending its unlawful conduct once sued." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). Instead, "a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000); see also *Lamar Advert. of Penn, LLC v. Town of*

Orchard Park, 356 F.3d 365, 375 (2d Cir. 2004) (“The voluntary cessation of allegedly illegal conduct usually will render a case moot ‘if the defendant can demonstrate that (1) there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.’”) (quoting *Granite State Outdoor Advert., Inc. v. Town of Orange*, 303 F.3d 450, 451 (2d Cir. 2002)). “Where, as here, the defendant is a government entity, ‘[s]ome deference must be accorded to a [governmental body’s] representations that certain conduct has been discontinued.’” *Lamar Advert. of Penn, LLC*, 356 F.3d 365 (first alteration in original). In this case, however, Defendants do not claim pre-access delay has ceased; they merely assert they are working on the Odyssey rollout and a centralization process and should be afforded additional time to complete those tasks.

As Plaintiffs point out, this case has been pending since May 20, 2021, Odyssey was first implemented in March 2020, and newly filed complaints still “sit in electronic queues, sometimes for days, waiting to be reviewed and processed before being made public.” (Doc. 26 at 8.) Plaintiffs therefore contend that their claims are not moot. The court agrees.

Because Defendants have not voluntarily ceased the pre-access review process which Plaintiffs challenge, Plaintiffs’ First Amendment claim is not moot. *See Schaefer*, 2 F.4th at 323 (“While the [Defendants’] improvements in rates of access are commendable, absent the relief Courthouse News [seeks], ‘nothing bars [Defendants] from reverting’ to the allegedly unconstitutional rates of access in the future.”) (quoting *Porter v. Clarke*, 852 F.3d 358, 365 (4th Cir. 2017)). Defendants’ motion to dismiss on mootness grounds is therefore DENIED.

C. Whether the Court Should Abstain From Exercising Jurisdiction.

As an alternative ground for dismissal, Defendants argue the court should abstain from exercising jurisdiction based on principles of comity, equity, and federalism.⁵ In the

⁵ Whether abstention is properly analyzed under Fed. R. Civ. P. 12(b)(1) is not settled law. *Compare Iacovacci v. Brevet Holdings, LLC*, 437 F. Supp. 3d 367, 374 (S.D.N.Y. 2020) (“A motion to abstain is considered as a motion to dismiss for lack of subject matter jurisdiction

Second Circuit, abstention is “not a jurisdictional bar based on Article III requirements, but instead a prudential limitation on the court’s exercise of jurisdiction grounded in equitable considerations of comity.” *Kaufman v. Kaye*, 466 F.3d 83, 88 n.1 (2d Cir. 2006) (quoting *Spargo v. New York State Comm’n on Jud. Conduct*, 351 F.3d 65, 74 (2d Cir. 2003)).

Ordinarily, “federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress.” But the Supreme Court has recognized some “carefully defined” situations in which courts may abstain. To ensure that abstention remains “the exception, not the rule,” federal courts may abstain only if a case falls into one of these “specific doctrines[.]”

Schaefer, 2 F.4th at 324 (citations omitted).

Defendants cite *Courthouse News Service v. Brown*, 908 F.3d 1063 (7th Cir. 2018), in support of abstention. In that case, the Court of Appeals for the Seventh Circuit concluded that the “principle of comity takes on special force when federal courts are asked to decide how state courts should conduct their business[.]” and a federal court should therefore “step back” while a state court transitions to electronic filing and works through the “implementation challenges and resource limitations” associated with the transition. *Id.* at 1074. The Seventh Circuit recognized that none of the “principal categories of abstention” were applicable but nonetheless found abstention “avoid[s] the problems that federal oversight and intrusion . . . might cause.” *Id.* at 1071. In *Courthouse News Service v. Gilmer*, the Eastern District of Missouri followed *Brown* and abstained because it did not want to “dictate to, oversee, or otherwise insert itself into

pursuant to [Federal] Rule [of Civil Procedure] 12(b)(1).” (alteration in original) (quoting *Wilmington Tr., Nat’l Ass’n v. Est. of McClendon*, 287 F. Supp. 3d 353, 360 (S.D.N.Y. 2018))) with *Kilroy v. Mayhew*, 841 F. Supp. 2d 414, 416 (D. Me. 2012) (“This Court has previously noted that ‘abstention is a prudential rather than a jurisdictional ground for dismissal,’ and, therefore, when considering abstention it does ‘not rely upon the pleading or burden requirements of either Rule 12(b)(1) or Rule 12(b)(6).’”) (quoting *Christian Action Network v. Maine*, 679 F. Supp. 2d 140, 143 n.2 (D. Me. 2010)); see also *Vereline v. Woodsville Guar. Sav. Bank*, 2015 WL 9216684, at *2 (D. Vt. Dec. 16, 2015) (“A motion to dismiss based on the abstention doctrine *may* be analyzed under Rule 12(b)(1).”) (emphasis supplied) (collecting cases).

the . . . operations and administration of its co-equal Missouri state courts” nor “impose on a state court a practice which is not currently employed by the Supreme Court of the United States.” 2021 WL 2438914, at *9 (E.D. Mo. June 15, 2021). Other courts have not followed suit, and *Brown* and *Gilmer* remain outliers.

The Second Circuit has not ruled on abstention in the context of a challenge to pre-access review but has found abstention appropriate in cases “challenging the internal workings of state courts.” *Kaufman*, 466 F.3d at 86 (collecting cases). In *Kaufman*, the plaintiff sought a declaratory judgment that New York state judicial appellate panel assignment procedures violated due process and requested the court to mandate by way of an injunction a new system for appellate panel assignments. *Id.* at 84. The Second Circuit found abstention appropriate because, among other things:

[A]ny remedy fashioned by the state would then be subject to further challenges in the district court. Appellant—or any state court litigant dissatisfied with the panel of judges assigned to his or her appeal—could raise compliance issues under the putative federal injunction claiming that the state court’s chosen remedy violated the Constitution or the terms of that injunction. Such challenges would inevitably lead to precisely the kind of “piecemeal interruptions of . . . state proceedings” condemned in *O’Shea* [*v. Littleton*, 414 U.S. 488 (1974)]. In short, we cannot resolve the issues raised here as to present assignment procedures without committing to resolving the same issues as to the remedy chosen by the state and as to the subsequent case-by-case implementation of the assignment procedures in the Second Department. This is exactly what *O’Shea* forbids.

Id. at 87.

Similarly, in *Disability Rights New York v. New York*, 916 F.3d 129, 134 (2d Cir. 2019), the Second Circuit rejected a request for an injunction requiring the New York courts to (1) notify litigants about rights to request modifications to proceedings; (2) hold proceedings that “provide augmented and substantive and procedural rights[;]” and (3) cease adjudications “until defendants ensure that the proceedings provide [requested] substantive and procedural rights[.]” *Id.* at 136. In upholding the district court’s abstention, the Second Circuit cited *Brown* with approval and found that a federal court’s ruling would govern “the occurrence of specific events that might take place” in future

state court proceedings and therefore represented the same threat of “ongoing, case-by-case oversight of state courts” present in *Kaufman*. *Id.*

An adjudication of this case does not require the piecemeal disruption to and intervention in state proceedings at issue in *Kaufman* and *Disability Rights*. There is no risk of “case-by-case implementation[,]” *Kaufman*, 466 F.3d at 87, because the remedy here is “more akin to [a] bright-line finding . . . than [an] ongoing monitoring of the substance of state proceedings[,]” and because “[a]n injunction requiring the [state courts] to provide . . . access to filed . . . civil complaints poses little risk of an ‘ongoing federal audit’ or ‘a major continuing intrusion of the equitable power of the federal courts into the daily conduct of state . . . proceedings.’” *Courthouse News Serv. v. Planet*, 750 F.3d 776, 791-92 (9th Cir. 2014) (quoting *O’Shea*, 414 U.S. at 500). The Southern District of New York reached this same conclusion in a pre-access review case strikingly similar to the instant one. *See* Transcript of Hearing on Plaintiff’s Motion for Preliminary Injunction at 47-48; *Courthouse News Serv. v. Tingling*, 2016 WL 8505086, at *1 (S.D.N.Y. Dec. 16, 2016), 2016 WL 8739010 (hereinafter, “*Tingling*”).

The Second Circuit, itself, has cautioned that “the weight of the First Amendment issues involved counsels against abstaining.” *Hartford Courant Co.*, 380 F.3d at 85, 100 (declining to abstain in right of access case where court was asked to determine “whether the public and press have a qualified First Amendment right to inspect docket sheets and, if so, the appropriate remedy for its violation by state courts”); *see also Planet*, 750 F.3d at 787 (“We disfavor abstention in First Amendment cases because of the risk . . . that the delay that results from abstention will itself chill the exercise of the rights that the plaintiffs seek to protect by suit”) (ellipsis in original) (internal quotation marks and citations omitted). It has thus “carefully defined . . . the areas in which such abstention is permissible, and [abstention] remains the exception, not the rule.” *Hachamovitch v. DeBuono*, 159 F.3d 687, 697 (2d Cir. 1998) (internal quotation marks omitted).

Because this case does not fit within traditional abstention categories and because it will neither result in piecemeal litigation, nor require continuing federal oversight of state court proceedings, abstention on the grounds of comity, equity, and federalism is not

required. See *Bethphage Lutheran Serv., Inc. v. Weicker*, 965 F.2d 1239, 1245 (2d Cir. 1992) (“[T]here is little or no discretion to abstain in a case which does not meet traditional abstention requirements.”) (internal quotation marks omitted) (quoting *Mobil Oil Corp. v. City of Long Beach*, 772 F.2d 534, 540 (9th Cir. 1985)). Defendants’ motion to dismiss on abstention grounds is therefore DENIED.

D. Whether Plaintiffs’ First Amendment Right of Access Was Violated.

A qualified First Amendment right of access attaches when a complaint is electronically filed. See *Courthouse News Serv. v. Planet*, 947 F.3d 581, 585 (9th Cir. 2020) (“[T]he press has a qualified right of timely access to newly filed civil nonconfidential complaints that attaches when the complaint is filed.”); *Courthouse News Serv. v. New Mexico Admin. Off. of the Cts.*, 2021 WL 4710644, at *39 (D.N.M. Oct. 8, 2021) (“The qualified right ‘attaches when the complaint is filed’ in a traditional sense—when it is in the court’s possession[.]”) (quoting *Planet*, 947 F.3d at 585). “[The Second Circuit’s] public access cases and those in other circuits emphasize the importance of immediate access where a right to access is found.” *Lugosch*, 435 F.3d at 126 (collecting cases). “The constitutional right of access, however, is not absolute, and must, in certain circumstances, ‘give way . . . to other rights or interests[.]’” *ABC, Inc. v. Stewart*, 360 F.3d 90, 98 (2d Cir. 2004) (alteration in original) (citing *Waller v. Georgia*, 467 U.S. 39, 45 (1984)).

“Once a First Amendment right of access to judicial documents is found, the documents ‘may be [removed from public access] only if specific, on the record findings are made demonstrating that [this restriction] is essential to preserve higher values and is narrowly tailored to serve that interest.’” *United States v. Erie Cnty.*, 763 F.3d 235, 239 (2d Cir. 2014) (addressing document sealing) (alteration in original) (quoting *Lugosch*, 435 F.3d at 120); see also *Planet*, 947 F.3d at 596 (“[Defendant] must demonstrate first that there is a ‘substantial probability’ that its interest in the fair and orderly administration of justice would be impaired by immediate access, and second, that no reasonable alternatives exist to ‘adequately protect’ that government interest.”) (citations omitted). “Broad and general findings and conclusory assertions are insufficient to justify

deprivation of public access to the record[.]” *Bernstein*, 814 F.3d at 144-45 (internal quotation marks and citations omitted) (alteration accepted).

Defendants must justify withholding a document to which there is a First Amendment right of access. *See, e.g., Bernstein*, 814 F.3d at 144 (“To overcome the First Amendment right of access, the proponent of sealing must ‘demonstrat[e] that closure is essential to preserve higher values and is narrowly tailored to serve that interest.’”) (alterations in original) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987)).⁶ In order to find this burden has been satisfied, a court must make “‘specific, on the record findings . . . demonstrating that [withholding] is essential to preserve higher values and is narrowly tailored to serve that interest.’” *In re N.Y. Times Co.*, 828 F.2d at 116 (quoting *Press-Enter. Co.*, 478 U.S. 13-14).

Although courts agree on the importance of First Amendment access, they differ as to how much delay, if any, can be tolerated consistent with the U.S. Constitution. Some courts have held that the First Amendment “does not require . . . instantaneous access” and provides “some leeway where same-day access would be impracticable[.]” *Schaefer*, 2 F.4th at 328. The Second Circuit has held that public access must be immediate and contemporaneous:

In light of the values which the presumption of access endeavors to promote, a necessary corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous. . . . 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.

⁶ *See also Tingling*, 2016 WL 8739010 (finding “the clerk” had the “burden of demonstrating that its policy of refusing to provide public and press access to newly filed complaints until they are processed is [] essential to preserve higher values [and] is narrowly tailored to serve a substantial government interest”); *Planet*, 947 F.3d at 596 (“[Defendants] must demonstrate [rigorous scrutiny is satisfied.]”); *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 329 (4th Cir. 2021) (“Clerks offered no evidence . . . to carry the government’s burden.”) (internal quotation marks and citation omitted); *Courthouse News Serv. v. New Mexico Admin. Off. of the Cts.*, 2021 WL 4710644, at *41 (D.N.M. Oct. 8, 2021) (relying on *Planet*).

Lugosch, 435 F.3d at 127 (quoting *Grove Fresh Distrib., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (internal quotation marks omitted)). Courts, in turn, have grappled with the correct definition of “contemporaneous.” For example, although the Eastern District of Virginia noted that Black’s Law Dictionary defined “contemporaneous” as “occurring . . . at the same time” and Merriam-Webster’s dictionary used similar language, it nonetheless defined “contemporaneous” “in this context” to mean “on the same day of filing, insofar as practicable and if not practicable within one court day.” *Courthouse News Serv. v. Schaefer*, 440 F. Supp. 3d 532, 559 (E.D. Va. 2020). The Fourth Circuit endorsed this “flexible standard” and found it consistent with its case law defining “contemporaneous” to mean “as expeditiously as possible.” *Schaefer*, 2 F.4th at 328. In *New Mexico Admin. Off. of the Cts.*, 2021 WL 4710644, at *41, the court permitted no greater than five business hours of pre-access delay because that “comes closest to the traditional right of access that the press had to civil complaints” prior to e-filing.

Although some courts have sought to impose a bright-line rule for permissible delay, here the focus must be on whether *any* delay is appropriate because any restriction on the First Amendment right of access must have “sufficient justification.” *Newsday*, 730 F.3d at 165; *see also Planet*, 947 F.3d at 596 (requiring justification for any delay to “immediate access” to newly filed complaints); *Tingling* (questioning defendant’s justification of First Amendment restriction for “ministerial review”). As the Second Circuit has observed, when a governmental entity contends that the “limited denial of access” is insubstantial, it “begs the question of whether there was a sufficient factual basis for denying access at all.” *ABC, Inc.*, 360 F.3d at 100.

Defendants urge this court to find that their stated interests in the administration of justice and confidentiality justify a delay in the First Amendment right of access. Their proof in support of these stated interests is scant. They claim their rates of access are fast by national standards,⁷ but they exclude the federal courts from their analysis and use

⁷ Defendants’ reliance on the “experience and logic” test for this argument is misplaced. In the Second Circuit, the “experience and logic” approach merely determines “whether the First

unreliable data from Plaintiff CNS's publication dates as support for an acceptable period of delay. The issue before the court is not how fast Plaintiffs cover new filings or whether Defendants' delay is comparable to that of other courts, but whether Defendants' pre-access review process is necessary to protect a higher interest and is narrowly tailored to achieve it. As this court noted, but for the pre-access review process, there would be no delay:

[T]here would be no delay in an e-filing system. There could be 1,000 complaints; there could be 100,000 complaints. There's no delay. The only delay that's going to show up in e-filing is when you insert a staff member into it to do something else. Right? Because [efilers are filing] with all of the document information that they need, and it's hitting the docket, and there isn't any step in between there by staff. . . . So that, by definition, means that the delay is in this review process.

(Doc. 57 at 26:24-27:10.)

Defendants seek to justify much of the delay inherent in their pre-access review process by citing the Vermont Superior Courts' interest in the protection of the privacy of litigants and third-parties in confidential information. This interest is an important one. *See United States v. Doe*, 63 F.3d 121, 127 (2d Cir. 1995) (“[T]he privacy interests of individuals may also warrant [courtroom] closure orders in certain circumstances.”) (collecting cases); *cf. Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 (1984) (recognizing “substantial interest” in, among other things, the “privacy interests of litigants and third parties”). It does not, however, trump the First Amendment right of access unless the pre-access review process is also narrowly tailored and “essential to preserve higher values[.]” *Bernstein*, 814 F.3d at 144.

E. Whether Defendants' Pre-Access Review Process is Narrowly Tailored.

To be narrowly tailored, Defendants must prove that “reasonable alternatives” to their pre-access review process cannot “adequately protect” their asserted interests. *Id.*

Amendment right applies to particular material[.]” *Newsday LLC v. Cnty. of Nassau*, 730 F.3d 156, 164 (2d Cir. 2013) (emphasis supplied), it does not dictate the acceptable measure of delay.

Defendants offer no evidence that staff review of signatures, filing fees, and filing codes is necessary to protect the orderly administration of justice. *See Planet*, 947 F.3d at 597 (finding no evidence that immediate access resulted in “accounting issues[,]” “compromised the quality and accuracy of information logged into the [case management system,]” “created efficiency problems[,]” or “resulted in loss, destruction, or mutilation of, or otherwise compromised the ‘integrity’ of, case files”); *see also Courthouse News Serv. v. Jackson*, 2009 WL 2163609, at *4 (S.D. Tex. July 20, 2009) (finding twenty-four to seventy-two hour delays to verify correct case number, proper court, accurate title, and proper filing category were not narrowly tailored). Indeed, Odyssey’s software system performs these same functions.

It is only Defendants’ pre-access review for confidential information which is not automated in any respect. Although Defendants claim this review can be performed in approximately twenty minutes, it often takes several days to complete. Because it requires human intervention, the amount of time involved varies from day to day and court to court. At times, the delay involved is unjustifiable by any measure. There is, moreover, no guarantee when public access will be provided. Although centralization has improved the degree of delay it, too, involves human intervention which, in turn, is dependent on adequate staffing and other resource considerations.

As for protecting privacy interests, out of 4,156 electronically filed civil complaints, only three exhibits to two complaints were rejected during the pre-access review process because they contained confidential information. This is a minute fraction of the total complaints filed and demonstrates that the pre-access review process is not “essential to preserve higher values[.]” *Bernstein*, 814 F.3d at 144. Defendants cite no evidence that they experienced significant confidentiality breaches prior to the implementation of pre-access review, nor do they cite any court in the country that has found a similar process necessary.

Although Defendants argue that the absence of pre-access review would place “the onus solely on filers” and would “less effectively protect the integrity of the civil litigation process and privacy interests,” (Doc. 44 at 30), the Vermont Superior Court

filing rules already place primary responsibility on filers. *See* V.R.P.A.C.R. 7(a)(1)(A) (“[T]he filer of a case record, whether in physical or electronic form, [must] determine whether all or part of the record being filed is not publicly accessible”); V.R.P.A.C.R. 7(a)(1)(B) (requiring filer to certify compliance with V.R.P.A.C.R.). Defendants provide no evidence that these safeguards, combined with post-access review, are insufficient. To the contrary, Defendants’ own evidence reveals that placing the onus on filers has been overwhelmingly effective.

The *Tingling* decision is instructive. There, the clerk in a New York state court “review[ed] the proposed filing for [compliance] with venue, caption, case type, as well as the attorney’s signature certification required by court rule[]” “to ascertain whether they contain materials that, by operation of law, may not be made available to the general public.” Only after completing the review process were complaints made available to the public. The clerk argued that the review was necessary to ensure compliance with filing rules and “to prevent a narrow category of errant pleadings at the outset in order to prevent confusion and waste.” The Southern District of New York rejected this argument and found the clerk “failed to meet its burden of demonstrating that its policy of refusing to provide the public and press access to newly filed complaints until after they are reviewed and logged is either essential to preserve higher values or is narrowly tailored to serve that interest.” A similar outcome is warranted here.

Because Defendants fail to demonstrate a “substantial probability” that the orderly administration of justice and privacy rights of litigants and third parties would be significantly impaired without their pre-access review, that practice cannot withstand constitutional scrutiny. *Press-Enter. Co.*, 478 U.S. 1, 14. A policy is not narrowly tailored if “a substantial portion of the burden . . . does not serve to advance [Defendants’] goals.” *Mastrovincenzo v. City of New York*, 435 F.3d 78, 98 (2d Cir. 2006). Against this backdrop, “it is the responsibility of the district court to ensure that [any restriction on access to] documents to which the public has a First Amendment right is no broader than necessary[.]” *United States v. Aref*, 533 F.3d 72, 82 (2d Cir. 2008).

Timely public access to court documents “allows the public to understand the activity of the . . . courts, enhances the court system’s accountability and legitimacy, and informs the public of matters of public concern.” *Bernstein*, 814 F.3d at 141. Defendants’ pre-access review thwarts these objectives in an inconsistent, unpredictable, and unjustifiable manner.

Because Defendants have failed to sustain their burden to demonstrate that their pre-access review process is justified by higher interests and narrowly tailored to advance those interests, Defendants have violated the public’s and Plaintiffs’ First Amendment right of access to newly filed complaints.

F. Whether Plaintiffs Are Entitled to Injunctive Relief.

A plaintiff seeking a permanent injunction must establish “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156-57 (2010) (quoting *eBay v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)). “An injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008).

To demonstrate irreparable harm, the moving party must establish an injury that is not remote or speculative but “certain and imminent harm for which a monetary award does not adequately compensate.” *Wisdom Imp. Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 113 (2d Cir. 2003). “Because the deprivation of First Amendment rights is an irreparable harm, in First Amendment cases ‘the likelihood of success on the merits is the dominant, if not the dispositive, factor.’” *Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 637 (2d Cir. 2020) (quoting *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013)); *see also SAM Party of N.Y. v. Kosinski*, 987 F.3d 267, 278 (2d Cir. 2021) (“The presence of irreparable injury to First Amendment rights, however, ‘turns on whether the plaintiff has shown a clear likelihood of success on the merits[.]’”) (quoting

Beal v. Stern, 184 F.3d 117, 123-24 (2d Cir. 1999)).

Plaintiffs have established that Defendants are violating their First Amendment right of access to newly filed complaints through the Vermont Superior Courts' pre-access review process and that an "injunction will prevent the feared deprivation." *Bronx Household of Faith v. Bd. of Educ. of City of N.Y.*, 331 F.3d 342, 350 (2d Cir. 2003). They have thus established irreparable harm. *See New York Civ. Liberties Union*, 684 F.3d at 305 (holding plaintiffs "would be irreparably harmed through the continued violation of [their First Amendment right of access]"). They have further established that their irreparable harm is ongoing. As the Ninth Circuit recently explained:

CNS's reporting on complaints must be timely to be newsworthy and to allow for ample and meaningful public discussion regarding the functioning of our nation's court systems. . . . [T]he public interest in obtaining news is an interest in obtaining contemporaneous news. . . . Thus, that "old" news is not worthy of, and does not receive, much public attention has been widely recognized . . . [and] the need for immediacy of reporting news "is even more vital in the digital age," where timeliness is measured in terms of minutes or seconds.

Planet, 947 F.3d at 594 (citations omitted).

"In a suit against the government, balancing of the equities merges into our consideration of the public interest." *SAM Party of N.Y.*, 987 F.3d at 278 (citing *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 58-59 (2d Cir. 2020)). In this case, the balance of hardships tips in Plaintiffs' favor because the public interest is served by timely reporting on the operations of the courts and because "securing First Amendment rights is in the public interest." *N.Y. Progress & Prot. PAC*, 733 F.3d at 488. Correspondingly, "[n]o public interest is served by maintaining an unconstitutional policy when constitutional alternatives are available to achieve the same goal." *Agudath Israel of Am.*, 983 F.3d at 637.

Although "the Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs," *Rizzo v. Goode*, 423 U.S. 362, 378-79 (1976) (internal quotation marks omitted), and "courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction[.]" the

court can safeguard these interests by limiting the scope of its injunction. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citations omitted). Plaintiffs’ request for an injunction prohibiting enforcement of all “policies and practices that deny Plaintiffs contemporaneous access to newly filed civil complaints” and “prohibiting [Defendants] from applying [V.R.P.A.C.R.] 7(a)(3)” is overbroad. (Doc. 16 at 21.) An injunction addressing only the specifically challenged pre-access review process and leaving internal procedures to the Vermont Superior Courts is more appropriate. This type of injunction “in no way restricts or comments on the regulations that are in place for [Defendants] to review and accept for filing . . . complaints when they are filed.” *Tingling*.

For the foregoing reasons, Plaintiffs’ request for permanent injunctive relief is GRANTED IN PART and DENIED IN PART. Defendants are hereby ENJOINED from prohibiting public access to newly filed civil complaints which have not been designated confidential by the filer until the Vermont Superior Court has completed a pre-access review process. Defendants may continue to restrict public access post-filing where a potential violation of their filing rules has been found.

G. Whether Plaintiffs Are Entitled to Declaratory Relief.

The Second Circuit has identified five factors to consider in deciding whether to issue a declaratory judgment:

(i) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved; (ii) whether a judgment would finalize the controversy and offer relief from uncertainty; (iii) whether the proposed remedy is being used merely for procedural fencing or a race to res judicata; (iv) whether the use of a declaratory judgment would increase friction between sovereign legal systems or improperly encroach on the domain of a state or foreign court; and (v) whether there is a better or more effective remedy.

New York Times Co. v. Gonzales, 459 F.3d 160, 167 (2d Cir. 2006) (internal quotation marks omitted) (quoting *Dow Jones & Co. v. Harrods Ltd.*, 346 F.3d 357, 359-360 (2d Cir. 2003)). Declaratory relief in this case would serve no purpose which the court’s permanent injunction has not achieved. Accordingly, Plaintiffs’ request for declaratory

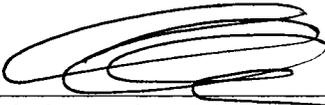
relief is DENIED.

CONCLUSION

For the foregoing reasons, the court DENIES AS MOOT Plaintiffs' motion for preliminary injunction (Doc. 26), DENIES Defendants' motion to dismiss (Doc. 43), GRANTS IN PART and DENIES IN PART Plaintiffs' request for permanent injunctive relief, and DENIES Plaintiffs' request for declaratory relief. (Doc. 16.) Defendants are HEREBY ENJOINED from delaying public access to electronically filed civil complaints until the Vermont Superior Courts' pre-access review process is complete.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 19th day of November, 2021.



Christina Reiss, District Judge
United States District Court

Exhibit 23

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Texas Bar Journal
November, 2014

Feature

E-Filing

David Slayton¹ Megan LaVoie²

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THE DIGITAL AGE

Eight Things to Know about E-Filing in Texas

It's been nearly a year since e-filing became mandatory for civil cases in Texas's 10 most populous counties and for all case types in the state's appellate courts. During this time, efiletexas.gov and users of the new system have experienced many milestones.

There are now 109 counties and 290 courts e-filing on efiletexas.gov and more than 82,000 registered users. In the first six months of mandatory e-filing, more than 2 million filings came in, with an average of 18,000 filings per weekday. By January 2015, 93 percent of the Texas population will be covered by e-filing counties, and approximately 90 percent of all civil and family law filings in the Texas court system will be done electronically.

There are still counties whose mandate is approaching and more attorneys and legal professionals to sign up. To make the transition smoother and to assist with troubleshooting, here are eight things to keep in mind about e-filing:

1. It takes less than five minutes to register.

If you haven't registered, go to efiletexas.gov to get started. You will be directed to choose an electronic filing service provider. In the simplest terms, an EFSP is like an electronic courier that virtually delivers your filing to the court. To start e-filing, attorneys must choose an EFSP. The service providers listed on efiletexas.gov have met the certification requirements outlined by the **Texas Office of Court Administration**, meaning that they will work with the statewide system. Each EFSP offers varying services, and the site has a comparison chart to help users choose a provider. From the fee structure and hours of support to the back-end firm billing integration and other value-added services, there are plenty of options. After you have selected an EFSP, all you need is Internet access, your EFSP login, case information, and digital versions of the documents to be filed.

2. Bookmarks and links in POFs prove helpful.

Having access to tools such as a word processor, Adobe *899 Acrobat Standard or Adobe Acrobat Pro, and a scanner can help with the transition to e-filing. You must convert all documents into a text-searchable PDF to e-file. Judges and attorneys rely on filings being easy to navigate. If you are submitting a brief, consider hyperlinking citations in all documents and using bookmarks for different sections, which can be helpful to judges reviewing those filings.

To further simplify this process, read the Texas Supreme Court's *Guide to Creating Electronic Appellate Briefs*, available on

the court's website, www.search.txcourts.gov/ebriefs.aspx. The guide isn't just for appellate attorneys; it has many useful tips for lawyers practicing in the trial courts as well.

3. Standardized codes create a unified system for filers.

Familiarize yourself with the Judicial Committee on Information Technology's Technology Standards (available at <http://www.txcourts.gov/rules-forms/rules-standards.aspx>), which were updated and approved in October 2014, to unify codes from the filer's perspective in all trial courts across the state. The codes are for civil, family, juvenile, probate, and multi-district litigation cases.

Previously, each county had various ways of categorizing different cases and documents, and some counties had broad codes while others had more specific ones. This meant that some counties had 500 choices for naming documents while others had only 25 choices, creating confusion and frustration for filers. The Texas Supreme Court encouraged JCIT to work with clerks to standardize codes across the state so that filers could have a uniform experience no matter where they were filing. Having 115 standardized case types for all 254 counties now allows users to have a seamless e-filing experience from one jurisdiction to the next. Almost all e-filing counties are using the standardized codes at this time.

4. Filings may be returned for correction without affecting your deadline.

Clerks cannot refuse to file a document for non-conformance with the rules, but they can return the document for correction under [Texas Rules of Civil Procedure 21\(f\)\(11\)](#) and [21c\(e\)](#). So, even if your document is returned for correction, it is considered filed when originally transmitted to the EFSP. The e-filing system provides a history of all transactions, so there is no need to worry that you will miss your deadline if your document is returned for correction. Simply fix the errors and send it back to the clerk by the deadline stipulated by the clerk. A clerk can ask for corrections under the following eight circumstances approved by the Texas Supreme Court and outlined in the JCIT Technology Standards:

1. Insufficient fees
2. Insufficient funds
3. Document addressed to the wrong clerk

TROUBLESHOOTING E-FILING ISSUES

Case not found: When e-filing existing cases, providers will sometimes indicate "case not found" or something similar. *Solution:* Be sure to enter the case number exactly as is--including dashes and leading zeroes. If the case still can't be found, most providers have an option to bypass the search and e-file anyway.

Missing filing types: Some users click on "New Case" when they intend to e-file within an existing case. The items you e-file to start a case (like an NOA and docket sheet) are different than what you'd e-file later on in the case (exhibits, briefs, etc.). *Solution:* If your pre-ferred filing type isn't shown, ensure you are filing the correct document at the correct stage of the proceeding. If there isn't a fee to file your document, choose "No Fee Document."

EFSPs providing incorrect information: Some service providers ask e-filers to call a given court for help with e-filing. *Solution:* The court can only answer questions regarding filings returned for correction. Court staff members are not trained on each service provider's software, and as a result, they are generally unable to answer questions on the mechanics of e-filing. If you have issues with the system, you should contact your EFSP's customer service number available at

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efiletxas.gov/service-providers.htm. The **Texas Office of Court Administration** is working with service providers to assist e-filers throughout the process. If you have technical difficulties, contact your EFSR. If your issue is not resolved, please email the OCA at efilingissues@txcourts.gov

HOW EFILETEXAS.GOV WORKS

Efiletxas.gov is a system that receives electronic documents (as PDFs) from attorneys and other filers via Web portals and securely distributes these documents to the appropriate county or appellate court where they can be accepted into the court's case management system.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

There are three basic components to this system:

- **EFSPs** - Electronic filing service providers are vendors that provide Web portals for filers to submit documents to the efiletxas.gov system. Filers register with one or more of these EFSPs to submit documents. EFSPs offer additional services for a fee. The state also offers a no-cost EFSP service for submitting documents at efile.txcourts.gov. There are currently 12 EFSPs in operation.

- **EFM** - An e-filing manager is a system that accepts filings from the EFSPs and distributes them to the various county and appellate courts. Court clerks must log in to the EFM to review and accept filings. Courts can also connect and integrate their case management systems to the efiletxas.gov EFM and receive filings directly to their systems.

- **CMS** - Case management systems are the programs courts use to manage all the cases in their jurisdictions, including information about the parties involved, hearings, filings, evidence, etc. These systems are created and maintained by a variety of vendors or by the county and can connect with efiletxas.gov to share information.

*900 4. Incorrect or incomplete information

5. Incorrect formatting

6. PDF documents combined

7. Illegible or unreadable

8. Document contains sensitive data

A filing can be rejected only if the documents were ordered to be sealed or if they were presented to the court on camera.¹ Further, clerks are required to reject filings from persons found to be vexatious litigants who have not presented an order

from the local administrative judge permitting the filing.

5. You must e-serve opposing counsel if they are registered to e-file.

A time-saving feature of the new e-filing system is the ability to e-serve opposing counsel. Parties must e-serve counsel who have registered in the e-filing system and made available their email addresses under [Texas Rule of Civil Procedure 21a\(a\)\(1\)](#). Currently, attorneys are not required to register for e-filing, and efiletexas.gov does not automatically pull email addresses from the State Bar records. As a result, the new e-filing system does not contain the contact information of all Texas attorneys--only those attorneys who have registered with the system. This has led to instances of frustration where an e-filing party could not e-serve opposing counsel. A good practice is to call opposing counsel before filing to ask them if they have registered with the system and if they haven't, encourage them to register. Remember as well that the new [Texas Rule of Civil Procedure 21a\(1\)-\(2\)](#) allows for email, commercial mail, or fax service without the need to resort to a Rule 11 agreement if e-service through an individual service provider is not possible. In addition, the e-serving feature allows attorneys to track whether opposing counsel have received the e-service and if they have opened the document.

6. Sensitive data must be protected.

Sensitive information must be redacted from documents before e-filing or filing in paper under [Texas Rule of Civil Procedure 21c\(a-f\)](#). Data that must be redacted unless the inclusion of the data is specifically required by a statute, court rule, or administrative regulation include:

- Driver's license number

- Social Security number

- Passport number

- Tax ID number

- Government-issued ID number

- Bank account number

- Credit card number

- Financial account number

- Birth date

*901 • Home address

• Name of any person who was a minor when the suit was filed

Attorneys are responsible for replacing the sensitive information with an “X” in place of each omitted digit or character or by removing the information in a manner indicating that the data has been redacted. Attorneys must also retain an unredacted version of the document while the case is pending and any related appellate pro-ceedings filed within six months of the date the judgment was signed. If documents are filed containing sensitive data, the clerk **may** return the document for correction so that the sensitive information can be redacted.

7. E-serving discovery is an option.

In addition to e-serving counsel, the EFSPs, including the state-provided option, allow for attorneys to exchange discovery and other unfiled documents through the e-filing system. This feature also allows attorneys to easily track what discovery has been received and when it was reviewed. To do this, select ““Service Only” (and unselect “e-Filing”) through your EFSP. The provider makes sure it gets delivered to the other attorney and allows you to verify that the document was received and opened. Remember, this happens through the e-filing software but does not pass through the court.

8. Criminal e-filing is on its way.

Attorneys and judges who are enjoying the benefits of e-filing have asked when criminal trial courts will venture into the electronic world. Fifteen counties have expressed to the JCIT interest in being included in a pilot program for criminal e-filing. By statute, as a result of HB 349 during the 83rd Legislative Session, Hidalgo County must implement criminal e-filing by Sept. 1, 2015. Note that efiletexas.gov is configured to handle criminal e-filing, and the OCA expects at least three counties to begin the pilot by the end of 2014.

Footnotes

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^{a2} **MEGAN LaVOIE** is the director of public affairs and special counsel for the Office of Court Administration. She previously served as general counsel and communications director for State Sen. Robert Duncan. laVoie is a graduate of Texas Tech University and St. Mary’s University School of Law.

¹ [Texas Rules of Civil Procedure 21\(f\)\(4\)\(B\)](#) prohibit these documents from being e-filed.

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Works.