UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

COURTHOUSE NEWS SERVICE,

Plaintiff, Case No.: 4:22-cv-106 MW/MAF

v.

BRENDA D. FORMAN, in her official capacity as the Broward County Clerk of Courts; the **FLORIDA E-FILING AUTHORITY**; and **KAREN E. RUSHING**, in her official capacity as chair of the Florida E-Filing Authority,

Defendants.
_____/

PLAINTIFF COURTHOUSE NEWS SERVICE'S
MOTION FOR PRELIMINARY INJUNCTION
WITH SUPPORTING MEMORANDUM OF LAW

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

MOTION FOR PRELIMINARY INJUNCTION 1

MEMORANDUM 2

INTRODUCTION 2

FACTS 6

I. CNS 6

II. Tradition of Access to Civil Complaints 8

III. Florida E-Filing Disrupts Traditional Access 10

IV. Broward's Delay History and a Simple Fix 12

V. Defendant's Refusal to Provide Pre-Processing Access 15

ARGUMENT 16

I. CNS is Likely to Prevail on the Merits 19

A. The First Amendment Right of Access Protects New Complaints 19

B. This Right Attaches Upon Filing at the Portal and Traditional Pre-Processing Access is Required 26

C. Defendants Cannot Meet Their Burden 33

II. First Amendment Harms Constitute Irreparable Injury 35

III. The Remaining Factors Favor CNS 36

IV. Bond Requirement Should be Waived or Nominal..... 37

CONCLUSION 38

ORAL ARGUMENT 38

LOCAL RULE 7.1(C) CERTIFICATE OF COMPLIANCE 40

LOCAL RULE 7.1(F) CERTIFICATE OF COMPLIANCE 40

CERTIFICATE OF SERVICE 40

TABLE OF AUTHORITIES

Cases Page(s)

Austin v. Univ. of Fla. Bd. of Trs.,
2022 WL 195612 (Jan. 21, 2022) 35, 37

BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC,
425 F.3d 964 (11th Cir. 2005)..... 37

Bernstein v. Bernstein Litowitz Berger & Grossmann LLP,
814 F.3d 132 (2d Cir. 2016)..... 20, 21, 22

Bonner v. City of Prichard, Alabama,
661 F.2d 1206 (11th Cir. 1981)..... 17

Brown v. Advantage Eng'g, Inc.,
960 F.2d 1013 (11th Cir. 1992)..... 24

Brown & Williamson Tobacco Corp. v. FTC,
710 F.2d 1165 (6th Cir. 1983)..... 21

Canal Auth. v. Callaway,
489 F.2d 567 (5th Cir. 1974)..... 17

Chicago Tribune Co. v. Bridgestone/Firestone, Inc.,
263 F.3d 1304 (11th Cir. 2001)..... 4, 25

Courthouse News Serv. v. Cozine,
2022 WL 593603 (D. Or. Feb. 14, 2022)..... 29

Courthouse News Serv. v. Cozine,
2022 WL 1000775 (D. Or. Apr. 4, 2022) 26

Courthouse News Serv. v. Gabel,
2021 WL 5416650 (D. Vt. Nov. 19, 2021).....*Passim*

Courthouse News Serv. v. Gilmer,
2021 WL 243914 (E.D. Mo. June 15, 2021) 32

Courthouse News Serv. v. Jackson,
2009 WL 2163609 (S.D. Tex. July 20, 2009)..... 29, 30, 37

Courthouse News Serv. v. Jackson,
2010 WL 11546125 (S.D. Tex. Mar. 2, 2010)..... 6, 22

Courthouse News Serv. v. Planet,
750 F.3d 776 (9th Cir. 2014)..... 21, 35

Courthouse News Serv. v. Planet,
947 F.3d 581 (9th Cir. 2020).....*Passim*

Courthouse News Serv. v. Planet,
2016 WL 4157354 (C.D. Cal. June 14, 2016) 30, 31

Courthouse News Serv. v. Planet,
2021 WL 1605216 (C.D. Cal. Jan. 26, 2021) 5

Courthouse News Serv. v. Schaefer,
2 F.4th 318 (4th Cir. 2021) 5, 22, 26, 32

Courthouse News Serv. v. Schaefer,
440 F. Supp. 3d 532 (E.D. Va. 2020) 30, 31, 32

Courthouse News Serv. v. Tingling,
2016 WL 8739010 (S.D.N.Y. Dec. 16, 2016) .....*Passim*

Courthouse News Serv. v. Yamasaki,
950 F.3d 640 (9th Cir. 2020)..... 5, 22

Dream Defenders v. DeSantis,
2021 WL 4099437 (N.D. Fla. Sept. 9, 2021)..... 17, 37

Edenfeld v. Fane,
507 U.S. 761 (1993)..... 18

El Vocero de P.R. v. P.R.,
508 U.S. 147 (1993)..... 20

F.T.C. v. AbbVie Prods. LLC,
713 F.3d 54 (11th Cir. 2013)..... 4, 21, 25

FF Cosmetics FL, Inc. v. City of Miami Beach,
866 F.3d 1290 (11th Cir. 2017)..... 18, 35, 37

Fla. Businessmen for Free Enter. v. City of Hollywood,
648 F.2d 956 (5th Cir. 1981)..... 36

Fla. Med. Ass'n, Inc. v. U.S. Dep't of Health, Educ. & Welfare,
601 F.2d 199 (5th Cir. 1979)..... 17

Globe Newspaper Co. v. Super. Ct.,
457 U.S. 596 (1982)..... 21, 23

Grove Fresh Distribs., Inc. v. Everfresh Juice Co.,
24 F.3d 893 (7th Cir. 1994)..... 29

IDT Corp. v. eBay,
709 F.3d 1220 (8th Cir. 2013)..... 25

In re Amend. to Fla. R. of Jud. Admin. 2.420,
320 So. 3d 626 (Fla. 2021)..... 13, 33

In re Iowa Freedom of Info. Council,
724 F.2d 658 (8th Cir. 1983)..... 21

In the Matter of Continental Ill. Sec. Litig.,
732 F.2d 1302 (7th Cir. 1984)..... 21

Int'l Cosmetics Exch. v. Gapardis Health & Beauty, Inc.,
303 F.3d 1242 (11th Cir. 2002)..... 17

Int'l News Serv. v. Associated Press,
248 U.S. 215 (1918)..... 21, 35

KH Outdoor, LLC v. City of Trussville,
458 F.3d 1261 (11th Cir. 2006)..... 36

Lorillard Tobacco Co. v. Reilly,
533 U.S. 525 (2001)..... 18

Lugosch v. Pyramid Co. of Onondaga,
435 F.3d 110 (2d Cir. 2016)..... 20, 21, 29

Mann v. Boatwright,
477 F.3d 1140 (10th Cir. 2007)..... 25

Mansfield v. R.J. Reynolds Tobacco Co.,
230 So.3d 181 (Fla. 5th DCA 2017)..... 28

McCutcheon v. Fed. Election Comm'n,
572 U.S. 185 (2014)..... 18

McMahon v. City of Panama Beach, Fla.,
180 F. Supp. 3d 1076 (N.D. Fla. 2016)..... 37

Newman v. Graddick,
696 F.2d 796 (11th Cir. 1983)..... 23, 24

Nixon v. Warner Commc'ns, Inc.,
435 U.S. 589 (1978)..... 24

Norwegian Cruise Line Holdings, Ltd. v. Rivkees,
553 F.Supp.3d 1143 (S.D. Fla. 2021)..... 18

Odebrecht Constr., Inc. v. Sec'y, Fla. Dep't Transp.,
715 F.3d 1268 (11th Cir. 2013)..... 36

Otto v. City of Boca Raton, Fla.,
981 F.3d 854 (11th Cir. 2020)..... 36

Palm Beach Newspapers, Inc. v. Burk,
471 So.2d 571 (Fla. 4th DCA 1985)..... 28

Press-Enterprise Co. v. Super. Ct. for Riverside Cty.,
478 U.S. 1 (1986).....*Passim*

Press-Enterprise Co. v. Super. Ct.,
464 U.S. 501 (1984)..... 20

Publicker Indus., Inc. v. Cohen,
733 F.2d 1059 (3d Cir. 1984)..... 21

Raysor v. Raysor,
706 So.2d 400 (Fla. 1st DCA 1998)..... 28

Richmond Newspapers, Inc. v. Va.,
448 U.S. 555 (1980) 21

Rushford v. New Yorker Magazine, Inc.,
846 F.2d 249 (4th Cir. 1988) 21

Scott v. Roberts,
612 F.3d 1279 (11th Cir. 2010) 35, 36

Siegel v. LePore,
234 F.3d 1163 (11th Cir. 2000) 17

Strax Rejuvenation & Aesthetics Inst., Inc. v. Shield,
49 So.3d 741 (Fla. 2010) 28

U.S. v. Jefferson Cty.,
720 F.2d 1511 (11th Cir. 1983) 17

U.S. v. Martin,
746 F.2d 964 (3d Cir. 1984) 25

U.S. v. Playboy Entm't Grp., Inc.,
529 U.S. 803 (2000) 18

Wilson v. Am. Motors Corp.,
759 F.2d 1568 (11th Cir. 1985) 24

Rules

Fed. R. Civ. P. 65 1

Fla. R. Jud. Admin. 2.420 13

Fla. R. Jud. Admin. 2.516(e) 27

Fla. R. Jud. Admin. 2.525(f)(3) 27

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65 and Local Rule 7.1, Plaintiff Courthouse News Service ("CNS") hereby moves for a preliminary injunction enjoining Defendants Brenda D. Forman, in her official capacity as the Broward County Clerk of Courts ("Clerk Forman"), the Florida E-Filing Authority (the "Authority"), and Karen E. Rushing, in her official capacity as chair of the Authority ("Chair Rushing") from continuing policies and practices that violate the First Amendment. Defendants withhold public access to newly filed, non-confidential Broward circuit civil complaints e-filed through the Authority's statewide portal, while those complaints languish in an electronic review queue awaiting completion of clerical processing.

In paper times, whenever courts were open for business, complaints were made publicly available right after they crossed the intake counter and before docketing (now often called "processing"). But that is not the case in Broward County where delays are pervasive. CNS often must wait days to access civil complaints, undermining its ability to report timely on newsworthy events. Technology, however, need not be the bottleneck Defendants have created. Simple technological solutions exist to restore traditional access to newly filed complaints, the foundational documents invoking the judicial branch's authority that are central to understanding legal disputes. Consequently, under the U.S. Supreme Court's

seminal "experience and logic" test in *Press-Enterprise Co. v. Super. Ct. for Riverside Cty.*, 478 U.S. 1, 9 (1986) ("*Press-Enterprise II*"), a qualified First Amendment right of access attaches to e-filed complaints upon their receipt.

The delays caused by Defendants' self-imposed "no access before process" stance are unconstitutional. Defendants cannot meet the high burden required to justify curtailment of access rights: an "overriding interest" that is "essential to preserve higher values and is narrowly tailored to serve that interest." *Id.* at 9. In an e-filing environment, where software performs intake tasks, justifying delays is unlikely. Nor are Defendants' policies narrowly tailored. Less restrictive technological means exist to permit both public access upon receipt and clerical processing to occur concurrently, without one disrupting the other. That's exactly what this Court, most federal courts, and many state courts do. CNS therefore seeks preliminary injunctive relief prohibiting Defendants from continuing policies and practices that deny CNS access to newly filed, non-confidential circuit civil complaints while they sit in review queues waiting to be "processed." Courts have repeatedly found similar practices unconstitutional.

MEMORANDUM

INTRODUCTION

CNS seeks to address systemic delays in public access to newly filed, non-confidential civil complaints resulting from Defendants' withholding access until

clerical processing is complete. These delays violate the First Amendment. Since time beyond memory, journalists in Florida and nationwide reviewed paper-filed civil complaints right after they crossed the clerk's intake counter and before docketing. Complaints often contain breaking news, so they were available for viewing quickly whenever the court was open. In paper times, many intake clerks employed a wooden bin where they placed copies of complaints on receipt for public review.

Most federal courts, including this Court, and many state courts carried that access tradition into the modern e-filing era; new filings become public on receipt after automated intake and before clerical processing. In those courts, software performs the intake clerk's job. CNS' complaint here was accessible pre-processing. State e-filing courts in Alabama, Arizona, California, Connecticut, Georgia, Hawaii, Nevada, New York, Utah, Vermont, and Washington are examples of such access. In fact, Arizona provides statewide access through the same software vendor—Granicus—that Florida uses.

Ready access to complaints is essential for accurate reporting on new actions before they become yesterday's news. It is vital to the public's ability to understand and debate what occurs in courts. To withhold disclosure undermines public scrutiny and often effectively results in suppression, particularly in the digital era of 24/7 cycles, where news grows stale rapidly.

Within the Eleventh Circuit, there exists both a history of recognizing the right of access to civil filings and the logic behind openness. *See Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1312 (11th Cir. 2001); *F.T.C. v. AbbVie Prods. LLC*, 713 F.3d 54 (11th Cir. 2013). For these reasons, under *Press Enterprise II*'s experience and logic test, a First Amendment right of access attaches to new e-filed complaints on their receipt.

Once the right attaches, Defendants must justify any delay by an overriding interest essential to preserving higher values than the First Amendment. In an e-filing environment, where software performs intake tasks and access can be provided without disrupting clerical processing, justifying delays is unlikely. Moreover, any delay must be narrowly tailored to serve an overriding, essential interest. *Press-Enterprise II*, 478 U.S. at 9.

Defendants have adopted policies and practices that disrupt traditional access, without constitutional justification. The Florida Court's E-Filing Portal ("Portal") is the statewide mandatory access point for e-filing complaints, open virtually around-the-clock. Upon filing, complaints flow into county clerk work queues where they sit until processed. Public access and processing can occur concurrently, without disrupting either. Instead, for a six-month period ending February 28, 2022, public access to Broward circuit civil complaints was: **13%** on the day of filing; **44%** one day post-filing; **14%** two days post-filing; and **29%**

withheld three days or more. More than 8,800 complaints were filed within that period. There is no constitutional justification, much less an overriding one, for this "no access before process" system and its inherent delays.

Even if an overriding interest existed, Defendants' restrictions are not narrowly tailored because less restrictive alternatives are available. *See Press-Enterprise II*, 478 U.S. at 14. In Florida's Granicus environment, Defendants have the power to provide traditional access like Arizona, which provides a review queue for new complaints making them automatically accessible virtually upon receipt and prior to processing. This application (plus alternatives used in state and federal courts nationwide) is available at relatively low cost. Although CNS has requested pre-processing access in writing, Defendants have declined.

Courts throughout the nation have recognized a First Amendment right of access to civil complaints attaches upon receipt and deemed unconstitutional similar "no-access-before-process" policies. *See, e.g.*, *CNS v. Gabel*, No. 2:21-cv-000132, 2021 WL 5416650, at *13 (D. Vt. Nov. 19, 2021), *appeal filed*, No. 21-3098 (2d Cir. Dec. 17, 2021); *CNS v. Schaefer*, 2 F.4th 318, 328 (4th Cir. 2021); *CNS v. Yamasaki*, 950 F.3d 640 (9th Cir. 2020); *CNS v. Planet*, 947 F.3d 581, 596-97 (9th Cir. 2020) ("*Planet III*") and, on remand, *CNS v. Planet*, No. CV-11-8083-DMG (FFMx), 2021 WL 1605216, at *1 (C.D. Cal. Jan. 26, 2021); *CNS v. Tingling*, No. 1:16-Civ-8742 (ER), 2016 WL 8739010, at p. 20 (S.D.N.Y. Dec. 16,

2016); and *CNS v. Jackson*, No. 4:09–CV–01844, 2010 WL 11546125, at *1-2 (S.D. Tex. Mar. 2, 2010). This Court should do the same and grant a preliminary injunction remedying the ongoing damage caused by Defendants' unconstitutional wrongs.

FACTS

I. CNS

CNS is a nationwide news service, founded decades ago on a belief that much news about civil litigation went unreported. *See* Girdner Declaration ("Girdner_Decl."), ¶4 (attached as **Exhibit A**). CNS employs about 240 people, most journalists covering state and federal courts nationwide. *Id.* CNS offers several publications. It publishes a free website, www.courthousenews.com, offering news and commentary now read by roughly 70,000 people each weekday. *Id.* ¶9. It functions much like a daily newspaper, featuring staff-written articles posted throughout each day and rotated on and off the homepage on a 24-hour news cycle. *Id.*

Among CNS' other publications are two print newsletters and an electronic *Daily Brief* covering appellate rulings, including U.S. Supreme Court and federal circuit decisions, and significant rulings from federal district courts (including this Court) and circuit courts of appeals (including the Eleventh Circuit). *Id.* ¶6. CNS also publishes multiple *New Litigation Reports* containing staff-written summaries

of newsworthy new complaints. *Id.* ¶5. These reports cover trial courts within specific geographic areas. *Id.*

CNS now has approximately 2,750 subscribers nationwide, including law firms, law schools, government, businesses, and news outlets. *Id.* ¶7. Florida media, including the *Miami Herald, Orlando Sentinel, The Palm Beach Post, South Florida Sun Sentinel, Tampa Bay Times,* Univision, WESH-Orlando, WFTS-Tampa, WFTV-Orlando, WPBF-West Palm, WTLV-Jacksonville, WTSP-Tampa, and WTVJ-Miami, have credited CNS as the source for civil litigation news. *Id.* ¶11.

CNS employs eight journalists covering Florida, publishing eight *New Litigation Reports*, by geographic region. *Id.* ¶5; Abbott Declaration ("Abbott_Decl."), ¶5-6 (attached as **Exhibit B**). These reports cover all federal district and state circuit courts, including Broward's Seventeenth Judicial Circuit. They focus on complaints involving businesses, public entities, prominent individuals, and other newsworthy cases. Abbott_Decl., ¶7. The reports do not cover criminal or family law matters, name changes, probate filings, or most residential foreclosures. *Id.*; Girdner_Decl., ¶13. CNS does not seek to review the small number of civil complaints made confidential by court rule or accompanied by closure motions. *Id.*; Girdner_Decl., ¶13. Broward County is covered every court day, and the *Broward County Report* is e-mailed to subscribers each evening.

Id. ¶5; Abbott_Decl., ¶6. There are now 64 subscribing law firms to this report. Girdner_Decl., ¶5.

To prepare *New Litigation Reports* and identify cases that may warrant a website article, reporters visit their assigned courts to review new complaints. *Id.* ¶16. As courts began making complaints available online CNS also at times covers courts remotely. *Id.* Clerk Forman's website is located at www.browardclerk.org, or www.mybrowardclerk.org, and public terminals at her office provide access to this site. Abbott_Decl., ¶16. Broward complaints are accessed through this website. *See* www.browardclerk.org.

Given the nature of CNS' publications, any delay in a reporter's ability to obtain new complaints impairs CNS' ability to inform readers about their claims and allegations. *Id.* ¶27; Girdner_Decl., ¶¶14-15.

II. Tradition of Access to Civil Complaints

It is a long-standing tradition in courts nationwide for the press to review new paper complaints right after they crossed the intake counter and before clerical docketing. Girdner_Decl., ¶18; Abbott_Decl., ¶10. For decades, CNS editor and publisher, Bill Girdner, participated in and observed this practice in multiple state and federal courts—first as a courts reporter for the *Los Angeles Daily Journal*, then writing for the *Boston Globe, Miami Herald,* and *New York Times,* and finally for CNS' nationwide reporting. Girdner_Decl., ¶¶19-25. He is also aware of on-

receipt access to paper complaints in high-volume Florida courts in Miami, Orlando, Palm Beach, and Tampa, as well as in other courts throughout the country. *Id.* ¶¶24-25.

Midwest & Northeast bureau chief Adam Angione began as a CNS Ohio reporter in 2004, and has also observed traditional, on-receipt access to paper complaints. *See* Angione Declaration ("Angione_Decl."), ¶¶1, 9-16 (attached as **Exhibit C**). He recalls the wooden box with a half-moon cutout on the intake counter in the clerk's office in Cincinnati federal court where clerks placed paper complaints as they were filed. *Id.* ¶10. In 2007, Angione began supervising CNS' Miami-Dade reporter. *Id.* ¶12. That clerk's office had long since granted CNS stellar access to paper complaints right after being date-stamped. *Id.*

Mid-Atlantic & Southeastern bureau chief Ryan Abbott has worked in journalism for nearly two decades. Abbott_Decl., ¶2. In his experience also, paper-filed complaints were traditionally available on receipt right after intake and prior to docketing, and he has personally reviewed and reported them. *Id.* ¶10. Abbott knows many Florida counties historically provided traditional, on-receipt access to paper civil complaints. *Id.*

The process was simple and generally followed the same patterns. Filers approached the clerk's counter and handed a paper complaint to an intake clerk, who took filing fee payments and stamped the document as "filed," a process that

took a minute or less. Girdner_Decl., ¶18. The new complaint was quickly set aside in a bin near the intake window so that it was publicly accessible. *Id.*

Often the next day, a docketing clerk gathered the new complaints to "docket" them, the type of clerical work now dubbed "processing." Docketing was commonly time-consuming and included entering data—parties, lawyers, addresses, case nature, judge assigned, and case number—into a case management system. The new complaints were then put in folders and taken either to a judge's chambers or the records room. *Id.*,¶19.

Journalists traditionally reviewed new complaints after they were set aside by the intake clerk and before being picked up by the docketing clerk. *Id.* Complaints were thus regularly accessible on receipt, whenever the court was open for filing. *Id.* Many state and most federal courts carried this tradition into the e-filing environment, an environment that automates intake processes and should facilitate public access. *Id.* ¶27.

III. <u>Florida E-Filing Disrupts Traditional Access</u>

The Authority controls the Portal at www.myflcourtaccess.com. *Id.* ¶30. With narrow exceptions, e-filing is mandatory in Florida. *Id.* The Portal is the authorized statewide e-filing entry point. In other words, all e-filed documents, including those filed in Broward, flow through the Portal. The Authority is defined by Florida clerks themselves as the entity "charged with managing the design,

development, implementation, operation, upgrade, support and maintenance of the Florida Courts E-Filing Portal for the receipt and transmission of electronically filed court records." *See* Parsons Declaration ("Parsons_Decl."), ¶3,Ex. 1 (attached as **Exhibit D**), Florida Court Clerks & Comptrollers PowerPoint slide. The Authority thus manages the flow of new complaints and could send them to a public review queue.

The Portal runs on software written by Granicus (Florida's and Arizona's vendor) Girdner_Decl., ¶29. As illustrated in Angione's declaration, the Portal functions similarly to other e-filing systems:

(1) filers submit documents and proceed through multiple screens entering required case information;

(2) the Portal e-filing manager program receives these documents and information;

(3) the Portal automatically sorts documents by county and delivers them to electronic work queues, including Clerk Forman's, which are not publicly accessible;

(4) documents sit in these queues awaiting clerk processing; and

(5) once processed, documents then migrate to case files in the local systems. *See* Angione_Decl., ¶¶17-45.

The Authority could, but does not, provide public access to any civil complaints through a Portal application. As noted, Broward circuit civil complaints are made publicly available only via the Clerk's website, whether through courthouse computer terminals or elsewhere. Non-confidential Broward complaints, however, are not made public until processing is completed. Girdner_Decl., ¶33. In the meantime, they wither in the Broward queue. Resulting delays are pervasive.

IV. Broward's Delay History and a Simple Fix

CNS has reported on Broward circuit civil complaints since 2003, first reporting on paper complaints and then, when e-filing became mandatory for attorneys in 2013, reporting on e-filed complaints. *Id.* ¶¶30-32. Broward is a large, high-volume, important court.[1] *Id.* ¶36. While other large Florida courts provided traditional access on receipt to paper complaints, access delays in Broward have been a chronic problem. *Id.* ¶35. With the transition to e-filing, access delays continue to plague Broward. Most new complaints continue to be withheld from public view for at least one day and often longer, depending on the office's work rhythm. *Id.* ¶33; Abbott_Decl., ¶¶13-22. Delays approaching a week or more are common. Abbott_Decl., ¶22.

[1] On average, nearly 1,500 complaints are currently filed monthly.

For example, in November 2018, Abbott visited Clerk Forman's office to attempt to obtain counter access to circuit civil complaints e-filed that day; he was unable to obtain any. *See REPORT: Tour of Florida Courthouses to Access Court Records*, Abbott_Decl., Exhibit 2. Clerk Forman later acknowledged new complaints are rarely made public on the day of filing. Abbott_Decl., ¶18. Responding to the tour report, her office explained its policy on when complaints should be made available as "two days for case filings and three days for supplemental filings 80 percent of the time." *See Response of FCCC to the News Media Coalition's Report–"Tour of Florida Courthouses to Access Court Records"*, Abbott_Decl.,Ex. 3.

Delays in Broward have existed for years because it has a longstanding policy—continued by Clerk Forman—of preventing public access to complaints until clerical processing concludes. Abbott_Decl, ¶13; Girdner_Decl., ¶¶32-35. In addition, for nearly a decade, delays were also attributed to review and redaction obligations in Florida General Practice and Judicial Administration Rule 2.420, which purported to require clerks to review new filings to ferret out unredacted confidential information. Effective July 1, 2021, however, the Florida Supreme Court amended Rule 2.420 to remove any clerk review/redaction obligations for nearly all circuit court civil filings. *See In re Amend. to Fla. R. of Jud. Admin. 2.420*, 320 So. 3d 626, 627 (Fla. 2021).

The access blackout for Broward complaints still typically runs between one and three days. Prior to commencing this action and after the effective date of the rule amendment, CNS compiled access data for Broward, noting delays between each complaint's filing and public availability. Abbott_Decl., ¶21. This chart shows delays in calendar days from filing, for more than 8,800 complaints filed within the six-month period ending February 28, 2022:

Total Cases		
Category	**# of cases**	**Percent Total**
Zero Delay	1158	13.11% zero delay
One-Day Delay	3891	44.06% one-day delay
Two-Days Delay	1217	13.78% two-day delay
Three-Days Plus Delay	2565	29.05% three-days plus delay
Total Cases	**8831**	

In sum, almost half of new Broward complaints are withheld for two days or more, with nearly 87% of complaints unavailable on their filing day. *Id.* ¶22.

Withholding access, however, is readily avoidable. E-filing makes it easy for courts to provide access. Software handles basic intake work, requiring filers enter case information before submitting complaints. Automation facilitates pre-processing access. For example, courts in Arizona (with the same e-filing software as Florida), California, Georgia, and New York employ review queues that allow

users to view complaints as soon as they are received. Girdner_Decl., ¶¶39-41. The federal system employs an auto-accept option that automatically places non-confidential complaints and other filings into each case's public docket. *Id.* ¶¶42-46. Auto-accept state courts include courts in Alabama, Connecticut, Hawaii, Nevada, Utah, Vermont, and Washington. *Id.* Technological means permit the traditional access provided with paper filings, while allowing clerks to attend to clerical tasks as their schedules allow. *Id.* ¶¶41,44. Such courts, despite emergency pandemic orders and courthouse closures, continued to provide access to new complaints on receipt without disruption. *Id.* ¶¶27,29.

The options are inexpensive. In Arizona, Granicus installed a review queue for less than $13,000. *Id.* ¶39. The Authority, with more than $5,000,000 in cash reserves, has the means to accomplish this. Angione_Decl.,Ex. 2.

V. <u>Defendants' Refusal to Provide Pre-Processing Access</u>

Before resorting to this Court, CNS attempted to resolve the documented delay issues with Defendants. They have refused to engage.

On October 8, 2021, CNS wrote Clerk Forman, seeking pre-processing access. Girdner_Decl., ¶37, Exhibit 1. Clerk Forman did not respond, later stating, through counsel, that she never received a letter. *Id.* ¶37.

On January 4, 2022, CNS' counsel wrote the Authority's counsel. Parsons_Decl.,Ex. 2. Counsel for the Authority emailed, noting that the

correspondence had been forwarded to Chair Rushing and a response would not be provided until after the Authority's January board meeting. *Id.* Ex. 3. While Chair Rushing placed the letter on the agenda and handled the related item, she merely noted the letter's receipt and asked if there was any discussion before proceeding through the agenda. Neither Chair Rushing nor the Authority responded.

In a final attempt to resolve this controversy, on February 23, 2022, CNS counsel again wrote the Authority's counsel and Clerk Forman, requesting pre-processing access. *Id.* Ex. 4. The letters included courtesy copies of a draft complaint. *Id.* CNS never received a substantive response.[2]

Defendants' no-access-before-process policy restricts CNS' ability to report accurately and quickly while court news remains fresh. Defendants ironically take the court backwards on transparency while moving forward on e-filing technologies.

ARGUMENT

A district court may grant a preliminary injunction if the moving party

[2] In their respective responses to CNS' complaint, Defendants now point fingers at one another. Each claim it has no policy or practice inhibiting access and that the other is responsible for addressing CNS' access rights. *See, e.g.*, Forman Amended Motion to Dismiss (ECF No. 26) at 15; Authority Answer (ECF No. 25), at 12, First and Second Affirmative Defenses. CNS will respond to the other arguments raised in Forman's motion to dismiss, including abstention, judicial immunity, and failure to join indispensable parties, by separate filing.

shows: "(1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000)(citations omitted); *see also Int'l Cosmetics Exch. v. Gapardis Health & Beauty, Inc.*, 303 F.3d 1242, 1246 (11th Cir. 2002).

While a preliminary injunction can be viewed as an "extraordinary and drastic remedy," it should nonetheless be granted when the moving party "'clearly carries the burden of persuasion' as to all four prerequisites." *U.S. v. Jefferson Cty.*, 720 F.2d 1511, 1519 (11th Cir. 1983)(quoting *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974)). No single prerequisite controls; they are considered jointly on a sliding scale. *See Fla. Med. Ass'n, Inc. v. U.S. Dep't of Health, Educ. & Welfare*, 601 F.2d 199, 203 n.2 (5th Cir. 1979).[3] Indeed, "a strong showing on one element may compensate for a weaker showing on another." *Dream Defenders v. DeSantis*, No. 4:21-cv-191-MW/MAF, 2021 WL 4099437, at *17 (N.D. Fla. Sept. 9, 2021)(citing *Fla. Med. Ass'n*, 601 F.2d at 203 n.2). Moreover, ongoing First Amendment harms constitute immediate, irreparable injury and are

[3] In *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206 (11th Cir. 1981), the Eleventh Circuit adopted prior decisions of the former Fifth Circuit in existence on September 30, 1981, as binding precedent.

particularly suited for preliminary relief. *See FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017).

Finally, while "the initial burden of persuasion is on the moving party, the ultimate burden is on the party who would have the burden at trial." *Id.* (citing *Edenfeld v. Fane*, 507 U.S. 761, 770 (1993)). Here, the ultimate burden to justify a restriction on First Amendment rights lies with Defendants because "[w]hen the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *See McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 210 (2014)(citing *U.S. v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 816 (2000) and holding unconstitutional federal law imposing campaign contribution limits); *see also Edenfield*, 507 U.S. at 770-71 (burden to uphold speech restriction cannot be based on "mere speculation or conjecture;" government must "demonstrate that the harms it recites are real"); *Norwegian Cruise Line Holdings, Ltd. v. Rivkees*, 553 F.Supp.3d 1143, 1164 (S.D. Fla. 2021)(government has burden to prove with evidence that substantial government interest actually exists)(citing *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 561 (2001) and *FF Cosmetics*, 866 F.3d at 1298).

The issues raised here are no different. As discussed below, courts nationwide hold that a qualified First Amendment access right applies to civil complaints. Thus, the threshold question becomes whether Defendants can

overcome the "presumption of access [that] arises under *Press-Enterprise II*," which may be restricted "only if 'closure is essential to preserve higher values and is narrowly tailored to serve those interests.'" *Planet III*, 947 F.3d at 595 (quoting *Press Enterprise II*, 478 U.S. at 13-14). If Defendants cannot meet that burden—which they cannot—CNS has shown a likelihood of success on the merits. *See Gabel*, 2021 WL 5416650, at *16. CNS satisfies this and all other prerequisites for preliminary injunctive relief.

I. CNS is Likely to Prevail on the Merits

The question of whether Defendants' policies and practices of withholding access to new e-filed non-confidential civil complaints until after the completion of clerical processing violates the First Amendment is answered by applying the two-step analysis articulated in *Press-Enterprise II*. The analysis first asks whether a particular document or proceeding has historically been open and looks to the value of that openness, *i.e.*, the "experience and logic" test, and then considers whether Defendants meet their burden of justifying *any* access restrictions under the requisite constitutional scrutiny level. *Press-Enterprise II*, 478 U.S. at 8-10.

A. The First Amendment Right of Access Protects New Complaints

As the Supreme Court explained in *Press Enterprise II*, the "experience" component of the analysis requires courts to consider "whether the place and process have historically been open to the press and general public" while the "logic"

component asks "whether public access plays a significant positive role in the functioning of the particular process in question." *Id.* at 8. Analyzing records like complaints, courts consider "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 [governmental] process in question [the "logic" prong]." *See, e.g.*, *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 141 (2d Cir. 2016)(quoting *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2016)). While this test looks to "experience...throughout the United States," complete uniformity is not required to establish a tradition of access. *El Vocero de P.R. v. P.R.*, 508 U.S. 147, 150 (1993); *see also Press-Enterprise II*, 478 U.S. at 10-11 & n. 3-4 (finding tradition of access even though "several [s]tates … allowed preliminary hearings to be closed on the motion of the accused").

"The First Amendment right of access exists [ ] to enable free and informed discussion about important issues of the day and governmental affairs." *Planet III*, 947 F.3d at 589. This presumptive access right derives from a series of cases decided in the 1980s, where the Supreme Court initially recognized a First Amendment right of access in the context of criminal proceedings. *See*, *e.g.*, *Press-Enterprise II*, 478 U.S. at 13 (First Amendment access right to preliminary hearings); *Press-Enterprise Co. v. Super. Ct.*, 464 U.S. 501, 509-13 (1984)(access right to *voir dire* proceeding

transcripts); *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 605-06 (1982) (access right to witness testimony); *Richmond Newspapers, Inc. v. Va.*, 448 U.S. 555, 580 (1980)(right to attend criminal trials is "implicit in the guarantees of the First Amendment").

First Amendment access rights were later extended to civil proceedings and records. *See, e.g.*, *Lugosch*, 435 F.3d at 124; *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253-54 (4th Cir. 1988); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1061 (3d Cir. 1984); *In the Matter of Continental Ill. Sec.Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1177 (6th Cir. 1983); *In re Iowa Freedom of Info. Council*, 724 F.2d 658, 661 (8th Cir. 1983).

"A complaint, which initiates judicial proceedings, is the cornerstone of every case." *Bernstein*, 814 F.3d at 140; *see also Abbvie*, 713 F.3d at 62. Information contained in civil complaints is critical to "informed public discussion of ongoing judicial proceedings." *CNS v. Planet*, 750 F.3d 776, 787 (9th Cir. 2014) ("*Planet I*"). But news about complaints has short shelf life. In practice, "[t]he peculiar value of news is in the spreading of it while it is fresh." *Planet III*, 947 F.3d at 585 (quoting *Int'l News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918)).

Based on these principles, courts nationwide agree that new civil complaints are subject to a First Amendment presumption of access grounded in the "experience

and logic" test. The Second, Fourth, and Ninth Circuits have so held. *See Bernstein*, 814 F.3d at 141-43; *Schaefer*, 2 F.4th at 328 ("both the experience and logic prongs are satisfied here" thus "the press and public enjoy a First Amendment right of access to newly filed civil complaints"); *Planet III*, 947 F.3d at 591 ("qualified First Amendment right of access extends to timely access to newly filed civil complaints"). In *Bernstein*, the Second Circuit explained that "[c]omplaints have historically been publicly accessible by default" and "[p]ublic access to complaints allows the public to understand the activity of the federal courts, enhances the court system's accountability and legitimacy, and informs the public of matters of public concern." *Bernstein*, 814 F.3d at 141. A growing line of CNS cases confirms the First Amendment protection afforded to complaints. *See, e.g.*, *Gabel*, 2021 WL 5416650; *Schaefer*, 2 F.4th 318; *Yamasaki*, 950 F.3d 640; *Planet III*, 947 F.3d 581; *Tingling*, 2016 WL 8739010; and *Jackson*, 2010 WL 11546125.

While the Eleventh Circuit has yet to squarely address whether First Amendment access rights apply to civil complaints, it has a long history of recognizing the public's right to attend civil proceedings and access civil court records (and the associated positive values access fosters). At least forty years of Eleventh Circuit precedent and practice yields one conclusion: civil complaints meet the "experience and logic" test.

Decades ago, in the wake of the Supreme Court's decisions in *Richmond Newspapers* and *Globe Newspaper*, the Eleventh Circuit recognized public access rights to civil proceedings and records. It first did so in *Newman*, where the news media sought access to proceedings and records in litigation regarding overcrowding in Alabama prisons. *See Newman v. Graddick*, 696 F.2d 796, 798 (11th Cir. 1983).

Applying that precedent, the *Newman* court recognized a presumption of access applied to civil proceedings pertaining to prisoner release, incarceration, and confinement conditions. The rationale reflects the "experience and logic" approach the Supreme Court articulated three years later in *Press Enterprise II*. *See id.* at 801. The Eleventh Circuit perceived "little difference between a criminal trial and the proceedings here which relate to the release of convicted prisoners," noting the public has an interest in understanding which inmates may be released and why. *Id.* And when addressing whether access to pre- and post-trial proceedings was warranted the court observed, "[t]he integrity of the judicial process, which public scrutiny is supposed to safeguard, is just as much at issue in proceedings of this kind as at trial." *Id.* The court went on to hold the proceedings could only be closed when "necessitated by a compelling government interest" and only "if necessary to achieve a legitimate purpose." *Id.* at 802 (citing *Globe Newspaper*, 457 U.S. at 607).

As to the judicial records in *Newman*, government lists of prisoners deemed least deserving of further incarceration, the court applied the common law right of

access citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978). *See id.* at 803. It noted that "[t]his right, like the right to attend judicial proceedings, is important if the public is to appreciate fully the often significant events at issue in public litigation and the workings of the legal system." *Id.* at 803. The court emphasized the "*historic* presumption of access to judicial records must be considered in the balance of competing interests." *Id.* (emphasis added). The lists were opened.

Time and again post-*Newman*, the Eleventh Circuit has established a history of opening civil records, while repeatedly touting the logic behind doing so. First, it found a district court abused its discretion in sealing the entire court file in a wrongful death case, noting the public's right to observe and understand the judicial system and parties who invoke its power. *See Wilson v. Am. Motors Corp.*, 759 F.2d 1568, 1571 (11th Cir. 1985). Citing *Newman*, it recognized the "district court must keep in mind the [access] rights of a third party—the public." *Id.*

A few years later, the Eleventh Circuit again opened the court file in another personal injury case where pleadings, motions, and evidence were improperly sealed. *See Brown v. Advantage Eng'g, Inc.*, 960 F.2d 1013 (11th Cir. 1992). It reiterated its adherence to a tradition of open records: "Once a matter is brought before a court for resolution, it is no longer solely the parties' case, but also the public's case." *Id.* at 1016. Nine years later, the Court recognized a right of access

to discovery material filed to support pre-trial motions. *See Bridgestone/Firestone, Inc.*, 263 F.3d at 1312.

In 2013, the Eleventh Circuit specifically recognized courts have historically treated complaints as presumptively open records. *See AbbVie*, 713 F.3d at 62-63 (citing *IDT Corp. v. eBay*, 709 F.3d 1220 (8th Cir. 2013); *Mann v. Boatwright*, 477 F.3d 1140 (10th Cir. 2007); *U.S. v. Martin*, 746 F.2d 964 (3d Cir. 1984)). There, Solvay (AbbVie's predecessor) appealed the unsealing of a financial analysis exhibit attached to the FTC's complaint. *See id.* at 58. The Court deemed the record open and explained why public access to complaints is critical:

> A complaint, which initiates judicial proceedings, is the cornerstone of every case, the very architecture of the lawsuit, and access to the complaint is almost always necessary if the public is to understand a court's decision. Indeed, the complaint is so fundamental to litigation that the plaintiff's pleadings in the complaint determine whether a federal court has jurisdiction to even entertain the claim…Moreover, a large number of lawsuits…are disposed of at the motion to dismiss stage, where a court determines solely on the basis of the complaint whether the plaintiff has made sufficient factual allegations to state a claim…For this reason, courts have consistently treated complaints as judicial records for purposes of determining whether the common-law right of access applies.

Id. at 62 (citations omitted). Eleventh Circuit caselaw demonstrates the *Press-Enterprise II* "experience and logic" test is satisfied here.

Despite extensive caselaw, and experience/logic to the contrary, the Authority apparently believes that its self-imposed, access-denying behavior manufactures a history of no access to complaints e-filed at the Portal. *See* Forman

Authority Answer (ECF 25), at 12-13, Fifth Affirmative Defense. But law focuses on the *type* of document at issue, not its form and not filing processes that thwart access.

Just this month Judge Simon in Oregon rejected claims by that state's court administrator that, while there may be a First Amendment right of access to paper complaints, e-filed complaints are different: "Oregon's electronic filing system draws no meaningful distinction from the paper filing system in *Planet* with respect to the question of when the qualified right of access attaches." *CNS v. Cozine*, No. 3:21-cv-680-YY, 2022 WL 1000775, at *2 (D. Or. Apr. 4, 2022). If the Authority were correct that no tradition of access to e-filed complaints exists, that means states could erase First Amendment access by converting to e-filing. Obviously, that cannot be right. The federal system illustrates the opposite is true.

B. This Right Attaches Upon Filing at the Portal and Traditional Pre-Processing Access Is Required.

The presumptive constitutional right attaches when a complaint is filed. *Planet III*, 947 F.3d at 585; *accord Schaefer*, 2 F.4th at 328; *Gabel*, 2021 WL 5416650, at *13 ("qualified First Amendment right of access attaches when a complaint is electronically filed"); *Cozine*, 2022 WL 1000775, at *2 ("…the right of access to civil complaints attaches when they are submitted to the court."); *N.M. Admin. Off. of the Cts.*, No. CIV-21-0710 JB/LF, 2021 WL 4710644, at *39 (D. N.M. Oct. 8, 2021)("qualified right 'attaches when the complaint is filed' in a

traditional sense -- when it is in the court's possession….")(quoting *Planet III*, 947 F.3d at 585), *appeal filed*, No. 21-2135, (10th Cir. Oct. 29, 2021); *CNS v. Jackson*, No. H–09–18442009, WL 2163609, at *5 (S.D. Tex. July 20, 2009)("There is an important First Amendment interest in providing timely access to new case-initiating documents.").

Florida's system itself demonstrates access rights attach on a complaint's filing at the Portal. E-filed complaints are deemed filed when they are received at the Portal, which applies electronic time-stamps. *See* Fla. R. Jud. Admin. 2.525(f)(3) ("The filing date for an electronically transmitted document is the date and time that such filing is acknowledged by an electronic stamp or otherwise, pursuant to any procedure set forth in any ECF Procedures approved by the supreme court, or the date the last page of such filing is received by the court or clerk."); Fla. R. Jud. Admin. 2.516(e)("The date of filing is that shown on the face of the document by the judge's notation or the clerk's time stamp, whichever is earlier."); Florida Courts E-Filing Portal Standards, 1.2.4 Electronic Notification of Receipt("All submissions must generate an acknowledgment message that is transmitted to the filer to indicate that the portal has received the document").[4]

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[4] *Available at*: https://www.floridasupremecourt.org/content/download/642993/file/AOSC20-77-Corrected.pdf. The receipt acknowledgement emails are generated automatically

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Florida's court system receives all e-filed complaints at the Portal; no lawsuit exists otherwise.

Traditionally, filing has been accomplished when clerks receive documents. *See Strax Rejuvenation & Aesthetics Inst., Inc. v. Shield*, 49 So.3d 741, 743 (Fla. 2010)("For many years the accepted view has been that filing is accomplished by simply placing the document in the hands of the proper officer."); *Mansfield v. R.J. Reynolds Tobacco Co.*, 230 So.3d 181, 182 (Fla. 5th DCA 2017)("filing of a complaint 'is complete once the pleading is delivered to and received by the proper officer'"); *Raysor v. Raysor*, 706 So.2d 400, 401 (Fla. 1st DCA 1998) ("Generally, a paper is deemed to be 'filed' when it is delivered to the proper official and received by that official to be kept on file."). Moreover, public access rights attach upon such receipt. *See Palm Beach Newspapers, Inc. v. Burk*, 471 So.2d 571, 574-75 (Fla. 4th DCA 1985)(public access rights triggered by filing of court document).

In *Planet III*, the Ninth Circuit recognized both that the right of access attaches upon receipt, and timely access to new civil filings is essential to ensure that news of civil disputes reaches the public "while it is fresh[,]" when it is most likely to become the subject of public discussion. *Planet III*, 947 F.3d at 585. It is

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and often sent virtually immediately, with a "Filing Received" subject line and then a stamped complaint attachment. Parsons_Decl., Comp.Exs. 5-6.

also essential to accurate and fair news reporting of civil disputes, and thus vital to the public's ability to discuss what is happening in a branch of government.

To delay or postpone disclosure undermines public scrutiny and may have the same result as complete suppression. Each passing day may constitute a separate and cognizable infringement of the First Amendment. *See Tingling*, 2016 WL 8739010, at p.20 (granting injunctive relief from bench); *see also Lugosch*, 435 F.3d at 126 ("Our public access cases and those in other circuits emphasize the importance of immediate access where a right to access is found."); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994)(where a First Amendment right of access is found, access should be "immediate and contemporaneous"); *Cozine*, 2022 WL 593603, at *6 ("…[*Planet III*] reinforces the importance of this right as society continues to digitize" and noting the greater need for quick access to information by the news media, measured in seconds and minutes in the digital age); *see also Gabel*, 2021 WL 5416650, at *17.

Because of the values access promotes, a necessary corollary is that once the access presumption attaches access should be provided prior to processing and without complaints ever lingering in a work queue. Indeed, federal courts dating back to 2009 have stricken "no-access-before-process" policies. *See Jackson*, 2009 WL 2163609, at *5 (preliminary injunction); *CNS v. Planet*, No. CV11-08083 SJO (FFMx), 2016 WL 4157354, at *19 (MSJ Order), *aff'd in part in Planet*

III; *Tingling*, 2016 WL 8739010 (preliminary injunction hearing transcript) and 2016 WL 8505086 (preliminary injunction); *CNS v. Brown*, No. 17 C 7933, 2018 WL 318485, at *6 (N.D. Ill. Jan. 8, 2018) (order on preliminary injunction), *rev'd on other grounds*, 908 F.3d 1063 (7th Cir. 2018); *CNS v. Schaefer*, 440 F. Supp. 3d 532, 562 (E.D. Va. 2020), *aff'd*, 2 F.4th 318 (4th Cir. 2021)(affirming declaratory judgment that clerks' policies violated CNS' "qualified right of access to newly-filed civil complaints contemporaneous with the filing of the complaint").

This jurisprudence began with *Jackson* in Texas. The newly elected Harris County clerk road into office on the slogan, "Get on line and not in line." *Jackson*, 2009 WL 2163609, at *2 n.1. Once elected, the clerk required reporters to review new civil complaints after completion of the "indexing and verification process." *Id.* at *2. The first federal judge to examine a clerk's no-access-before-process policy for new complaints followed the *Press-Enterprise II* analytical framework and enjoined the clerk, finding he failed to demonstrate his administrative policies were narrowly tailored. *Id.* at *3-4.

Two years later in 2011, after trying to convince the Ventura County, California clerk to abandon a similar policy, CNS filed the *Planet* case. In 2016, after the Ninth Circuit twice reversed the initially-assigned judge's dismissals of the case, the court granted summary judgment, following *Press-Enterprise II*. *See Planet*, 2016 WL 4157354.

In December of that year, New York's Southern District cited *Jackson* and *Planet* while enjoining the Manhattan state court clerk's no-access-before-process policy. *Tingling*, 2016 WL 8739010, at p. 20 ("[a]s in *Planet* and *Jackson*, this Court finds that the clerk has failed to meet its burden of demonstrating that its policy of refusing to provide the public and press with 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"); 2016 WL 8505086, at *1 (preliminarily "enjoin[ing] Defendant from denying access to newly filed civil complaints until after clerical processing and to require[ing] Defendant to provide Plaintiff access to those documents in a timely manner upon receipt.").

In 2018, CNS filed the *Schaefer* case in the Eastern District of Virginia. Two years later, following a four-day bench trial, the court cited prior CNS orders when entering judgment against two Virginia clerks who delayed access to new complaints until they were "fully indexed and docketed." *Schaefer*, 440 F.Supp.3d at 560. This court also followed *Press-Enterprise II* and found that "[d]efendants have failed to prove that their practices and customs that lead to the substantial delays in this case were narrowly tailored to serve those government interests." *Id.* The Fourth Circuit affirmed. *Schaefer*, 2 F.4th at 328-29.[5]

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[5] Other recent access cases do not dictate a different result. In *CNS v. Gilmer*, CNS has appealed an order of dismissal on abstention grounds that merely followed the

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Recently, in *Gabel* the defendants contended Vermont court rules authorized reviewing new complaints for confidential information (even though filers there, like Florida, are responsible for redaction), plus signatures, filings fees, and filing codes before accepting complaints and making them publicly available. But there was "no evidence that staff review…is necessary to protect the orderly administration of justice," particularly where the court's "software system performs [basic intake] functions" without "human intervention." *Gabel*, 2021 WL 5416650, at *15-16. The court concluded that "[b]ecause Defendants fail[ed] 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." *Id.* at *16 (quoting *Press Enterprise II*, 478 U.S. at 14).

Bottom line: Withholding access until processing is complete has been rejected and, as discussed next, Defendants cannot justify their similar policies.

Seventh's *Brown* opinion. 2021 WL 243914, at *8 (E.D. Mo. June 15, 2021). In *New Mexico AOC*, the defendants have appealed a district court order granting CNS' preliminary injunction motion and rejecting both abstention and the argument that access rights do not attach until complaints are "accepted." 2021 WL 4710644 (D.N.M. Oct. 8, 2021). In *CNS v. Glessner*, CNS has appealed a district court's order granting a motion to dismiss. 2021 WL 3024286 (D. Maine July 16, 2021).

C. Defendants Cannot Meet Their Burden.

To overcome the access presumption, Defendants must demonstrate their "no-access-before-process" policy is constitutionally justifiable and narrowly tailored under *Press-Enterprise II*. They cannot. Access can be restricted "only if 'closure is essential to preserve higher values and is narrowly tailored to serve those interests.'" *Planet III*, 947 F.3d at 595.

Planet III determined the California clerk's "no-access-before-process policy," *id.* at 587, did not survive constitutional scrutiny because the clerk failed to "demonstrate … that there is a 'substantial probability' that its [asserted] interest[s]" to support withholding access to new civil complaints until after administrative processing "would be impaired by immediate access, and … that no reasonable alternatives exist to 'adequately protect' that government interest." *Id.* at 596-600 (quoting *Press-Enterprise II*, 478 U.S. at 14). Defendants similarly cannot justify their policy of withholding access to new Broward complaints until after they are processed and "accepted."

Privacy concerns also do not justify delay. Rule 2.420 now squarely places the responsibility of identifying and redacting confidential information on the filer. *See In re Amend. to Fla. R. Jud. Admin 2.420*, 320 So. 3d at 627 (that decision was driven by delay concerns raised by the news media). Moreover, during the filing process filers check boxes identifying the limited categories of confidential

complaints, easily permitting those to be filtered from public access. Angione_Decl., ¶¶39-41. Thus, there is no justifiable reason for withholding access until processing is complete.

Even if there were some lingering justification, Defendants' solution is not narrowly tailored. As noted, Granicus can provide a public review queue for pre-processing access at relatively minimal cost. Defendants need only ask Granicus to implement what it has already done statewide in Arizona. In fact, last year, Granicus provided information at the request of Portal employees, explaining what Arizona was doing and how a review queue would work. Girdner_Decl., Exhibit 2. Nonetheless, Defendants refuse to pursue this solution.

Further options exist. Other courts use an "auto-accept" option that places records directly into the public case docket on receipt. The options are relatively quick and easy to implement. In fact, when the *Gabel* court entered a preliminary injunction, the state of Vermont implemented an "auto accept" configuration within three weeks, making e-filed non-confidential complaints publicly available immediately upon receipt for filing—without prior review or processing. *Id.* ¶46. The available options effectively accommodate both access rights and clerical processing needs, without one impeding the other. Defendants cannot defeat access by shifting blame; their policies and practices blocking access prior to

processing simply cannot withstand constitutional scrutiny. CNS is likely to succeed on the merits.

II. First Amendment Harms Constitute Irreparable Injury

As this Court recently observed, the Eleventh Circuit has "repeatedly held that harms to speech rights 'for even minimal periods of time, unquestionably constitute[] irreparable injury' supporting preliminary relief." *See Austin v. Univ. of Fla. Bd. of Trs.*, No. 1:21-cv-184-MW/GRJ, 2022 WL 195612, at *25 (Jan. 21, 2022) (citing *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010)); *see also FF Cosmetics*, 866 F.3d at 1298 ("an ongoing violation of the First Amendment constitutes irreparable injury").

Defendants cannot dispute that "[t]he particular value of news is in the spreading of it while it is fresh." *Planet III*, 947 F.3d at 585 (quoting *Int'l News Serv.*, 248 U.S. at 235), and that "the public cannot discuss the content of…complaints about which it has no information." *Planet I*, 750 F.3d at 788. Withholding "timely access to newly filed complaints," like Defendants do here, thus "stifles the 'free discussion of governmental affairs' that the First Amendment exists to protect." *Id.* at 787-88.

III. <u>The Remaining Factors Favor CNS</u>

When the non-moving party is the government, the third and fourth prerequisites—damage to the opposing party and the public interest—can be combined. *See Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 870 (11th Cir. 2020); *Scott*, 612 F.3d at 1290 ("When the state is a party, the third and fourth considerations are largely the same.").

Defendants will suffer no appreciable harm from an injunction. They can easily remedy access delays by providing pre-processing access. Moreover, they and the public have no interest in maintaining unconstitutional behavior. *See Odebrecht Constr., Inc. v. Sec'y, Fla. Dep't Transp.*, 715 F.3d 1268, 1290 (11th Cir. 2013)("State's alleged harm is all the more ephemeral because the public has no interest in the enforcement of what is very likely an unconstitutional statute"); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006)("even a temporary infringement of First Amendment rights constitutes a serious and substantial injury, and the city has no legitimate interest in enforcing an unconstitutional ordinance…[t]he public has no interest in enforcing an unconstitutional ordinance."); *Fla. Businessmen for Free Enter. v. City of Hollywood*, 648 F.2d 956, 959 (5th Cir. 1981)("The public interest does not support the city's expenditure of time, money, and effort in attempting to enforce an ordinance that may well be held unconstitutional.").

Here, the public benefits from greater transparency in and timely reporting on the judicial system. *See FF Cosmetics*, 866 F.3d at 1298 ("district court correctly ruled that enjoining the ordinances, if they were found to be in violation of the First Amendment, would advance the public's interest in freedom of speech").

CNS prevails on these factors too.

IV. Bond Requirement Should be Waived or Nominal

Although Rule 65 customarily requires a bond, waiving that requirement is within this Court's discretion. *See BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005)("court may elect to require no security at all"). This Court has dispensed of a bond when First Amendment-based claims against government were brought. *See, e.g.*, *Austin*, 2022 WL 195612, at *28; *Dream Defenders*, 2021 WL 4099437, at *34; *McMahon v. City of Panama Beach, Fla.*, 180 F. Supp. 3d 1076, 1112 (N.D. Fla. 2016).

Moreover, the requested relief requires Defendants do nothing more than provide pre-processing access; one existing solution Granicus has been implemented in Arizona. If the Court deems a bond necessary, it should be modest. In *Jackson*, for example, the court ordered a "nominal bond of $1,000" (*see Jackson*, 2009 WL 2163609, at *5) and in *Tingling* the court set a $5,000 bond. Girdner_Decl., ¶57.

CONCLUSION

American courts are the people's courts. Court records are the people's records. Systems injuring public access rights—in the name of technological progress—cannot be constitutionally sustained. Defendants' withholding of access until after clerical processing prevents CNS from relaying fresh news on lawsuits.

News is called "news"—not "olds"—for good reason. News reports what is happening now. By the time the public has access to many Broward complaints, that "news" is no longer.

CNS respectfully requests an order:

1. Enjoining Defendants from continuing their policies and practices of withholding newly e-filed non-confidential circuit civil complaints from press and public view until after clerical processing; and

2. Directing Defendants to provide CNS with access to newly e-filed, non-confidential circuit civil complaints upon their receipt for filing.

ORAL ARGUMENT

CNS requests oral argument, estimating 90 minutes is required.

Dated: April 14, 2022

Respectfully submitted,

THOMAS & LOCICERO PL

/s/ *Carol Jean LoCicero*
Carol Jean LoCicero (FBN 603030)
Mark R. Caramanica (FBN 110581)
601 South Boulevard
Tampa, FL 33606
Telephone: (813) 984-3060
Facsimile: (813) 984-3070
clocicero@tlolawfirm.com
mcaramanica@tlolawfirm.com
tgilley@tlolawfirm.com

Daniela B. Abratt (FBN 118053)
915 Middle River Drive, Suite 309
Fort Lauderdale, FL 33304
Telephone: (954) 703-3418
Facsimile: (954) 400-5415
dabratt@tlolawfirm.com
bbrennan@tlolawfirm.com

-and-

Jonathan E. Ginsberg (*pro hac vice*)
BRYAN CAVE LEIGHTON PAISNER LLP
1290 Avenue of the Americas
New York, NY 10104
Telephone: (212) 541-1130
Facsimile: (212) 541-4630
jon.ginsberg@bclplaw.com
dortiz@bclplaw.com

Attorneys for Plaintiff Courthouse News Service

LOCAL RULE 7.1(C) CERTIFICATE OF COMPLIANCE

Undersigned counsel for the Plaintiff hereby certifies that on April 13, 2022, she conferred with respective counsel for each Defendant to inform them of Plaintiff's intent to file this motion for a preliminary injunction. Counsel for each Defendant stated their intent to oppose the relief sought in this motion.

/s/ *Carol Jean LoCicero*
Carol Jean LoCicero

LOCAL RULE 7.1(F) CERTIFICATE OF COMPLIANCE

I hereby certify that this motion and memorandum of law contains 7,998 words, with such word count incorporating all portions of this document subject to the word limitations imposed under Local Rule 7.1(F).

/s/ *Carol Jean LoCicero*
Carol Jean LoCicero

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2022, a true and correct copy of the foregoing document is being electronically filed and will be furnished via CM/ECF and via electronic mail to:

Sidney C. Calloway
Amy Wessel Jones
SHUTTS & BOWEN LLP
200 East Broward Blvd., Ste. 2100
Fort Lauderdale, FL 33301
scalloway@shutts.com
jgoodwin@shutts.com
ajones@shutts.com
ehumaran@shutts.com

Counsel for Defendant Brenda D. Forman

Gregory T. Stewart
Lynn M. Hoshihara
Elizabeth Desloge Ellis
Kirsten H. Mood
NABORS, GIBLIN & NICKERSON, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
gstewart@ngnlaw.com
lhoshihara@ngnlaw.com
eellis@ngnlaw.com
kmood@ngnlaw.com
legal-admin@ngnlaw.com

Counsel for Defendants Florida E-Filing Authority and Karen E. Rushing

/s/ *Carol Jean LoCicero*
Carol Jean LoCicero