REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

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April 3, 2019

The Honorable Patricia M. Martin
Courtroom 800
Juvenile Court Building
1100 S. Hamilton Avenue
Chicago, IL 60612

Re: *In the Interest of Three (Suppressed) Minors*, Case Nos. 14 JA 00852, 17 JA 1251, 19 JA 209

Dear Judge Martin,

The Reporters Committee for Freedom of the Press (the "Reporters Committee") and 39 media organizations respectfully submit this letter in support of ProPublica's Motion to Vacate the Court's March 14, 2019 Order, which seeks to vacate an order of this Court prohibiting disclosure of the names of minors and "any other information" that would permit identification of the minors or their foster parents by ProPublica and "any and all other media."

Amici are members of the news media and organizations that advocate on behalf of the press and the public. Many of the *amici* regularly report on court proceedings and therefore have a direct interest in ensuring that journalists and news organizations remain free from unconstitutional restrictions on their ability to publish lawfully-obtained information. *Amici* also have a special interest in this matter because the sweeping order at issue is an unconstitutional prior restraint not only on ProPublica, but also on all other news media organizations.

As an initial matter, *amici* request that further proceedings related to these cases be public. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607–08 (1982) (holding that courts must consider "on a case-by-case basis whether closure is necessary to protect the welfare of a minor victim" based on the following factors: "the minor victim's age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of parents and relatives"). Here, the Court has not made any on-the-record findings demonstrating that compelling interests necessitate closure, nor has it narrowly tailored its closure order, as the First Amendment requires. *Id.*

This matter arises from the motion of three minors (the "Minors") for an order restraining ProPublica, specifically, and other news media, generally, from disclosing their names. On March 14, 2019, the Court granted that motion and entered an order (the "Order") restraining

"ProPublica and any and all other media" from "disclos[ing] the names and/or any other information that would permit the ready identification of either above Minors, including specific address[es] or other demographic information, including school names." ProPublica learned the names of the Minors through its usual, lawful journalistic practices. (ProPublica Mot. to Vacate, Ex. 2, 3/7/19 Tr. at 6.) Barring any disclosure of the information covered by this Order hampers ProPublica's ability to report on matters of significant public concern—namely, potential systemic failures in the Illinois child welfare system. *See, e.g.*, *Stuck Kids*, ProPublica Illinois, https://bit.ly/2U4W85R (last visited Apr. 3, 2019) (reporting on Illinois Department of Children and Family Services' overuse of psychiatric hospitals).

The Order is an unconstitutional prior restraint. *See Alexander v. United States*, 509 U.S. 544, 550 (1993) ("The term prior restraint is used 'to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.'") (quoting M. Nimmer, *Nimmer on Freedom of Speech* § 4.03, p. 4–14 (1984)). Prior restraints are "the most serious and the least tolerable infringement on First Amendment rights" because they act as "an immediate and irreversible sanction," not only "chilling" speech but "freezing" it, at least for a time. *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). Prior restraints are particularly oppressive because they prevent the restricted information from being heard or published at all and are therefore the most direct attack on the marketplace of ideas. *Id.* The damage done by a prior restraint is "particularly great" where, as here, it "falls upon the communication of news and commentary on current events." *Id.*

"[T]he Supreme Court has never upheld a prior restraint, even faced with the competing interest of national security or the Sixth Amendment right to a fair trial." *See Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 227 (6th Cir. 1996). Rather, beginning in 1931 with *Near v. Minnesota*, the Supreme Court has without fail rejected all prior restraints on the press. 283 U.S. 697, 716–18 (1931) (invalidating prior restraint against defamatory and racist publication that allegedly disturbed the "public peace"); *Stuart*, 427 U.S. at 570 (rejecting prior restraint intended to protect Sixth Amendment rights of criminal defendant); *CBS, Inc. v. Davis*, 510 U.S. 1315 at 1316 (rejecting prior restraint intended to protect "confidential and proprietary" business information); *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (rejecting prior restraint despite the government's claim that an injunction was necessary to prevent a "grave and immediate danger" to national security); *see also Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 104 (1979) (invalidating a state law prohibiting a newspaper from publishing the identity of a juvenile defendant and stating that "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information" absent an extraordinary countervailing state interest).

It appears that the Court here may have entered its Order in an attempt to protect the privacy of the Minors. However, potential revelation of sensitive information related to minors does not automatically create a state interest "of the highest order" such that a prior restraint would pass constitutional muster. *N.Y. Times Co.*, 403 U.S. at 714. In *Globe Newspaper*, the Supreme Court determined that "safeguarding the physical and

psychological well-being of a minor" is not always a significant enough interest to overcome the First Amendment right of public access to trials; thus, a similar interest in minor privacy is certainly not an interest "of the highest order" needed to constitutionally impose a prior restraint. *See* 457 U.S. at 607–08.

Similarly, in *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978), the Supreme Court held that it was unconstitutional to criminally prosecute a newspaper for publishing information about confidential judicial disciplinary proceedings. As Justice Stewart explained in his opinion concurring with the Court's judgment, the "government cannot take it upon itself to decide what a newspaper may and may not publish"; although "government may deny access to information and punish its theft, government may not prohibit or punish the publication of that information once it falls into the hands of the press, unless the need for secrecy is manifestly overwhelming." 435 U.S. at 849 (Stewart, J., concurring).

"The presumption against prior restraints is heavier—and the degree of protection broader—than that against limits on expression imposed by criminal penalties." *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558–59 (1975); *see also Stuart*, 427 U.S. at 589 (Brennan, J., concurring in the judgment) ("The First Amendment thus accords greater protection against prior restraints than it does against subsequent punishment for a particular speech.") (citing *Carroll v. Princess Anne*, 393 U.S. 175, 180–81 (1968)). Accordingly, just as the Constitution would protect ProPublica from punishment for publishing information about the Minors, it surely protects ProPublica from being enjoined from publishing that information in the first place.

For these reasons, *amici* urge this Court to grant ProPublica's motion and vacate the March 14, 2019 Order.

Respectfully submitted,

The Reporters Committee for Freedom of the Press (Additional *amici* listed on following page)

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Association of Alternative Newsmedia
Boston Globe Media Partners, LLC
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