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FOR FREEDOM OF THE PRESS

1156 15th Street NW, Suite 1020
Washington, DC 20005
(202) 795-9300
www.rcfp.org

Bruce D. Brown
Executive Director
bbrown@rcfp.org
(202) 795-9301

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BY EMAIL

September 26, 2019

Honorable Henry C. Johnson, Chairman
Subcommittee on Courts, Intellectual Property, and the Internet
United States House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Honorable Martha Roby, Ranking Member
Subcommittee on Courts, Intellectual Property, and the Internet
United States House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Johnson and Ranking Member Roby:

Tony Mauro and the Reporters Committee for Freedom of the Press (the “Reporters Committee”) respectfully submit the following written testimony to the Subcommittee on Courts, Intellectual Property, and the Internet regarding the hearing, “The Federal Judiciary in the 21st Century: Ensuring the Public’s Right of Access to the Courts.” We thank the Subcommittee for its efforts to increase public access to the nation’s federal courts, including the Supreme Court.

Mr. Mauro is a veteran American legal journalist and a senior advisor to the Reporters Committee. Mauro has covered the Supreme Court since 1979 for Gannett, USA Today, Legal Times, and most recently for the National Law Journal, which merged with Legal Times in 2009. He is the author of several books about the Supreme Court, has served on the Reporters Committee’s steering committee since 1984, and was inducted in 2011 into the Freedom of Information Act Hall of Fame, in recognition of his work promoting greater public access to the courts and other institutions.

The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. The Reporters Committee for Freedom of the Press has long urged greater transparency from the courts, for the benefit of the public.

More than 20 years ago Fred Graham, one of the Reporters Committee’s founders, wrote that allowing audio and video coverage “would be immensely instructive to the American public and couldn’t possibly affect the outcome of any

case.” Fred Graham, *Doing Justice With Cameras in the Courtroom*, *Media Studies Journal: Covering the Courts*, 32, 34 (Winter 1998). The need for greater public access to the courts through audio or video coverage has only increased in recent years. More than ever, the judicial branch has drawn intense public interest because of the importance of the cases it decides, taking a greater role in issues that affect the lives of all Americans while the other two branches are at loggerheads.

Bush v. Gore, 531 U.S. 98 (2000) (settling the 2001 presidential election), *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) (finding the individual mandate in the Affordable Care Act constitutional), and *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) (holding due process guarantees right to marry for same-sex couples in same manner as opposite-sex couples) are among the landmark Supreme Court arguments that were not visible to the general public, except for the 200-plus spectators who were lucky enough to be seated in the courtroom. It simply makes no sense for the Court to deprive the public of access to these important and complex cases in the 21st century.

Lower federal courts have already taken major steps toward opening their proceedings to audio as well as video broadcast. According to a survey by Fix the Court, all 13 federal appeals courts allow for some form of audio broadcast of arguments, either on a simultaneous, same-day or delayed basis. *Judicial Wellness, Workplace Conduct and Broadcast Policies in Federal Appeals Courts*, Fix the Court, <https://perma.cc/8PNG-BDAB> (last updated June 3, 2019). Some courts have even allowed video streaming. High-profile appeals court cases, such as those related to the “travel ban” in 2017, were listened to by thousands of people who were able to understand both sides of the issue in a way that print or broadcast stories cannot fully convey. Similar access has become routine in state high courts, and studies have found that such coverage has had little or no negative impact on the judicial process. *Cameras in the Court Resource Guide*, Nat’l Ctr. for State Courts, <https://perma.cc/WRW7-ZD3L> (last updated Mar. 20, 2019); *see also* Kenneth Jost, *Cameras in the Courtroom*, CQ Researcher (Jan. 14, 2011), <https://perma.cc/V69R-SUB5>.

And yet, the Supreme Court persists in its refusal to allow video or live audio coverage of its proceedings and has only rarely permitted same-day audio to be released. As it stands now, the audio recordings of Supreme Court arguments are made public only on the Friday of the week in which they occur—too late for useful news coverage, because the arguments themselves take place only on Mondays, Tuesdays, or Wednesdays, with very rare exceptions.

Based on the justices’ comments over the years, many factors appear to go into their decision to stave off the cameras and microphones. Part of it is exceptionalism—the belief that the Supreme Court is unique and need not follow the trends of lower courts. Justices also assert that oral arguments take place for the benefit of the justices, not as an educational tool for the general public. Justices also argue that oral arguments represent only a small and distorted part of the decision-making process. They worry also that allowing broadcast coverage would attract grandstanding lawyers and disruptive hecklers.

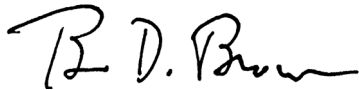
For instance, Chief Justice Roberts has said: “My judgment is that [cameras in the Supreme Court have] the potential of hurting the court.” (2018); “The Supreme Court is different, not only

domestically but in terms of its impact worldwide.” (2011); and “We don’t have oral arguments to show people, the public, how we function. We have them to learn about a particular case in a particular way that we think is important.” (2006). *See also* Richard Wolf, *Cameras in the Supreme Court? Not Anytime Soon*, USA Today (Mar. 7, 2019), <https://perma.cc/UVP4-S82S> (discussing Justice Alito and Justice Kagan’s comments that the justices have not discussed cameras in the Supreme Court since 2010); *see also* Ariane de Vogue, *No Cameras, Please: How the Supreme Court Shuns the Spotlight*, CNN (Oct. 6, 2017), <https://perma.cc/3596-L9BW>.

With respect to the justices, these rationales are not strong policy reasons to keep the public out. The Supreme Court is the ultimate people’s Court and should, at long last, recognize that the people deserve to observe its tremendously important work. If the justices continue to balk at greater access, Congress has every right and authority to require it through legislation. Congress has legislated [how many justices](#) comprise the Court, and [when the Court begins its term](#), so it certainly can also require the Court to allow the American public audio and video access to its proceedings.

Accordingly, the Reporters Committee believes that increased public access to the nation’s federal courts, including the Supreme Court, is, on balance, an important step to promote accountability, transparency, and an informed electorate. Please do not hesitate to contact Melissa Wasser, policy analyst at the Reporters Committee, with any questions or comments. She can be reached at mwasser@rcfp.org.

Sincerely,



Bruce D. Brown, Executive Director

/s/ Tony Mauro
Tony Mauro, Senior Advisor

cc: Judiciary Committee Chair Jerrold Nadler
Ranking Member Doug Collins