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8  
9 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 **KRISTIN M. PERRY, et al.,**

12  
13 *Plaintiffs,*

14 v.

15 **GAVIN NEWSOM, in his official capacity as**  
16 **Governor of California, et al.,**

17 *Defendants,*

18 and

19 **DENNIS HOLLINGSWORTH, et al.,**

20 *Defendants-Intervenors.*

Case No. 09-CV-2292-WHO

**BRIEF OF AMICI CURIAE THE  
REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS AND 36  
MEDIA ORGANIZATIONS IN SUPPORT  
OF MEDIA INTERVENOR KQED, INC.**

Date: June 17, 2020

Time: 2:00 p.m.

Judge: Hon. William H. Orrick

Location: Courtroom 2, 17th Floor

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TABLE OF AUTHORITIES..... 3

INTRODUCTION..... 6

ARGUMENT ..... 7

    I. Public release of the Recordings serves the interests advanced by the common law and First Amendment rights of access to judicial documents. .... 7

    II. Public access to the Recordings will enhance the completeness of news reports about the trial..... 8

        A. An audio-visual recording conveys more and different information than a cold transcript. .... 8

        B. Video and audio recordings are crucial to the work of the news media and documentarians in conveying context and information to the public. .... 9

        C. Video and audio recordings enhance reporting on matters of historic significance. .... 13

    III. Any continued sealing of the Recordings must be narrowly tailored. .... 15

CONCLUSION ..... 16

APPENDIX A: Descriptions of Amici Curiae ..... 17

**TABLE OF AUTHORITIES**

**Cases**

*Courthouse News Serv v. Planet*, 947 F.3d 581 (9th Cir. 2020) ..... 7

*Courthouse News Serv. v. Brown*, 908 F.3d 1063 (7th Cir. 2018) ..... 7

*Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003)..... 7

*Hollingsworth v. Perry*, 570 U.S. 693 (2013) ..... 13, 14

*In re Application of CBS, Inc.*, 828 F.2d 958 (2d Cir. 1987) ..... 9, 12

*Katzmann v. Victoria’s Secret Catalogue (in re Courtroom TV)*,  
923 F. Supp. 580 (S.D.N.Y. 1996) ..... 12

*Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589 (1978)..... 7

*Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) ..... 13, 14

*Oliner v. Kontrabecki*, 745 F.3d 1024 (9th Cir. 2014) ..... 15

*Oxnard Publ’g Co. v. Superior Court*, 68 Cal. Rptr. 83 (Ct. App. 1968) ..... 8

*Perez–Guerrero v. U.S. Att’y. Gen.*, 717 F.3d 1224 (11th Cir.2013) ..... 15

*Perry v. Brown*, 667 F.3d 1078 (9th Cir. 2012) ..... 6

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335 (9th Cir. 2019) ..... 6, 7, 13, 15

*Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), *aff’d sub nom. Perry v. Brown*,  
671 F.3d 1052 (9th Cir. 2012) ..... 6, 13, 15

*Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555 (1980) ..... 7, 8, 9

*U.S. v. Doggart*, No. 1:15-CR-39 (E.D. Tenn. Oct. 30, 2017) ..... 11

*United States v. Criden*, 501 F. Supp. 854 (E.D. Pa. 1980) ..... 9

*United States v. Criden*, 648 F.2d 814 (3rd Cir. 1981) ..... 8, 9

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 19, 2013), <https://perma.cc/2BCH-WQ7A> ..... 14

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<https://perma.cc/Y8BB-MQ8G> ..... 13

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<https://perma.cc/2WKQ-WNNU> ..... 11

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 Dealer (Apr. 29, 2014), <https://perma.cc/ZWM8-9PVN>..... 12

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28

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2 <https://perma.cc/988L-H2LL> (last accessed April 29, 2020) ..... 14  
3 When We Rise (ABC 2017) ..... 13  
4 **Rules**  
5 Civil Local Rule 79-5 ..... 6  
6 Civil Local Rule 79-5(b) ..... 15

7  
8  
9  
10  
11  
12  
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15  
16  
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## INTRODUCTION

1  
2 In 2008, California voters adopted Proposition 8, a state constitutional amendment denying  
3 same-sex couples the right to marry. In 2010, the U.S. District Court for the Northern District of  
4 California enjoined enactment of Proposition 8 as unconstitutional under the Due Process and Equal  
5 Protection Clauses of the U.S. Constitution. *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 1004  
6 (N.D. Cal. 2010), *aff'd sub nom. Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012). Video recordings  
7 of the 12-day bench trial were entered into the record and filed under seal (“Recordings”). *See*  
8 *Schwarzenegger*, 704 F. Supp. 2d at 929.

9 In 2017, Bay-area public radio and television station KQED, Inc. (“Movant”) filed a motion  
10 in this Court to unseal the Recordings, which Defendants-Intervenors (“Proponents”) opposed. The  
11 Court concluded that, although the common law right of access to judicial documents applied to the  
12 Recordings, the compelling interest in preserving judicial integrity (as previously identified by the  
13 U.S. Court of Appeals for the Ninth Circuit in *Perry v. Brown*, 667 F.3d 1078, 1084–1085 (9th Cir.  
14 2012)) warranted continued sealing of the Recordings at the time of Movant’s request. *Perry v.*  
15 *Schwarzenegger*, 302 F. Supp. 3d 1047, 1057 (N.D. Cal. 2018), *appeal dismissed*, 765 F. App’x 335  
16 (9th Cir. 2019). However, pursuant to Civil Local Rule 79-5, the Court ordered the Recordings to  
17 be released on August 12, 2020, absent a showing by Proponents of compelling reasons to justify  
18 maintaining the Recordings under seal. *Id.* at 1049. On April 1, 2020, Proponents filed a Motion to  
19 Continue the Seal on the Recordings.

20 Amici urge this Court to deny Proponents’ motion. Disclosure of the Recordings will  
21 advance the purposes underlying both the common law and First Amendment rights of access to  
22 judicial documents: encouraging fair judicial proceedings and fostering informed civic engagement  
23 on matters of public importance. The historic trial to determine the constitutionality of Proposition  
24 8 remains a matter of significant public interest. Though transcripts are available, the Recordings  
25 provide the best and most complete depiction of the trial. There is a stark difference between cold  
26 transcripts and the Recordings at issue, which convey body language, inflection, tone of voice, and  
27 the emotional tenor of the trial. This additional information is particularly important for journalists  
28

1 and documentary filmmakers who depend on audio and video to report on matters of public and  
2 historic interest.

### 3 ARGUMENT

#### 4 **I. Public release of the Recordings serves the interests advanced by the common law and 5 First Amendment rights of access to judicial documents.**

6 Both the common law and the First Amendment provide the press and the public with a  
7 presumptive right of access to judicial documents. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589,  
8 598 (1978). Although the presumption originally arose in the context of criminal trials, the Ninth  
9 Circuit has held that the presumption extends to civil proceedings and associated records as well.  
10 *See Courthouse News Serv v. Planet*, 947 F.3d 581, 591 (9th Cir. 2020) (stating that “[t]he press’s  
11 right of access to civil proceedings and documents fits squarely within the First Amendment’s  
12 protections.”) (quoting *Courthouse News Serv. v. Brown*, 908 F.3d 1063, 1069 (7th Cir. 2018));  
13 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (recognizing the strong  
14 common law “presumption in favor of access to court records” in civil proceedings).

15 Public access to judicial proceedings and documents has long been recognized as “one of the  
16 essential qualities of a court of justice.” *Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555, 556  
17 (1980) (plurality opinion) (describing how the presumption of access to criminal proceedings traces  
18 to Colonial times and English history) (internal quotation marks omitted). Openness provides  
19 citizens with “assurance that the proceedings were conducted fairly to all concerned” and enhances  
20 fairness by exposing participants to public scrutiny. *Id.* at 569; *see also Nixon*, 435 U.S. at 598  
21 (finding a common law right of access to judicial records and documents based on “the citizen’s  
22 desire to keep a watchful eye on the workings of public agencies, and . . . a newspaper publisher’s  
23 intention to publish information concerning the operation of government.” (citations omitted)).

24 As this Court expressly recognized, the common law right of access to judicial documents  
25 applies to the Recordings at issue in this case. *Perry*, 302 F. Supp. 3d at 1055. Moreover, the Court  
26 noted that its “analysis would be no different if [it] applied a First Amendment right of access  
27 instead of the common-law right of access.” *Id.* at 1058. Indeed, disclosure of the Recordings

1 supports the purposes of both the First Amendment and the common law presumptions of access.  
2 Public access to the Recordings will bolster confidence in the judicial process by allowing citizens,  
3 including the large numbers who could not attend this historic trial in person, to observe the  
4 workings of the judicial system. *See Richmond Newspapers*, 448 U.S. at 572; *see also United*  
5 *States v. Criden*, 648 F.2d 814, 822 (3rd Cir. 1981) (holding that the news media may copy tapes  
6 introduced into evidence at trial in part because “the public forum values emphasized in [*Richmond*  
7 *Newspapers*] can be fully vindicated only if the opportunity for personal observation is extended to  
8 persons other than those few who can manage to attend the trial in person”). Although a transcript  
9 of the trial is publicly available, access to the Recordings is the closest substitute to in-person  
10 attendance. And, as described in more detail in Section II, *infra*, the Recordings themselves provide  
11 a more complete source of information regarding the events of the trial than the transcript.  
12 Unsealing the Recordings will ensure that the trial is “open to all who care to observe.” *Richmond*  
13 *Newspapers*, 448 U.S. at 564.

14 **II. Public access to the Recordings will enhance the completeness of news reports about**  
15 **the trial.**

16 A. An audio-visual recording conveys more and different information than a cold transcript.

17 Proponents contend that, because a written transcript of the trial is available, there is no  
18 “important public need” to access the Recordings. See Defs.-Intervenors Mot. to Continue the Seal  
19 at 22. However, a cold transcript is not an adequate substitute for an audio-visual recording, where  
20 one exists. Video provides the news media and the public with a more robust and informative  
21 depiction of a courtroom proceeding than even a perfect transcript of that proceeding. Unlike a  
22 transcript, a recording conveys body language, inflection, tone of voice, and other contextual  
23 information vital to a complete understanding of the proceeding. *See Criden*, 648 F.2d at 824  
24 (noting that in a written record, “[i]mportant, sometimes vital, parts of the trial, including the  
25 appearance, demeanor, expression, gestures[,] intonations, hesitations [sic], inflections, and tone of  
26 voice of witnesses, of counsel, and of the judge are not there.”) (quoting *Oxnard Publ’g Co. v.*  
27 *Superior Court*, 68 Cal. Rptr. 83, 95 (Ct. App. 1968). If access to audio visual recordings is  
28

1 withheld, “a substantial part of the real record of the proceeding will [be] permanently lost to public  
2 scrutiny.” *Id.*

3 Moreover, “actual observation of testimony or exhibits contributes a dimension which  
4 cannot be fully provided by second-hand reports.” *Id.* (granting media access to copy and  
5 rebroadcast videotaped evidence in criminal trial of public officials); *see also In re Application of*  
6 *CBS, Inc.*, 828 F.2d 958, 960 (2d Cir. 1987) (granting the news media the ability to copy a  
7 videotaped deposition, noting that “[t]ranscripts lack a tone of voice, frequently misreport words  
8 and often contain distorting ambiguities as to where sentences begin and end”). Providing access to  
9 a video recording allows a viewer to become “virtually a participant in the events portrayed,”  
10 amplifying the impact of the information presented. *United States v. Martin*, 746 F.2d 964, 971–72  
11 (3d Cir. 1984) (“The hackneyed expression, ‘one picture is worth a thousand words’ fails to convey  
12 adequately the comparison between the impact of the televised portrayal of actual events upon the  
13 viewer of the videotape and that of the spoken or written word upon the listener or reader.”)  
14 (quoting *United States v. Criden*, 501 F. Supp. 854, 859–60 (E.D. Pa. 1980)).

15 Access to the Recordings would similarly offer the public a more detailed, nuanced, and  
16 fulsome account of the testimony and legal arguments presented in what has proven to be an  
17 historic and influential case in the interpretation of constitutional law—and one which has remained  
18 a matter of significant public interest since its inception over a decade ago.

19 B. Video and audio recordings are crucial to the work of the news media and  
20 documentarians in conveying context and information to the public.

21 The U.S. Supreme Court has long recognized that the press plays a particularly important  
22 role in facilitating public monitoring of the judicial system, acknowledging that “[w]hile media  
23 representatives enjoy the same right of access as the public,” they often “function[] as surrogates for  
24 the public” by reporting on judicial matters to the public at large. *Richmond Newspapers*, 448 U.S.  
25 at 573. As surrogates for the public, the news media have a responsibility to provide accurate and  
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1 thorough accounts of judicial events—a responsibility which is greatly enhanced when its members  
2 have access to audio-visual recordings of courtroom proceedings.

- 3  
4 1. Video recordings aid the news media and documentary filmmakers in providing  
more robust and thorough reporting of judicial proceedings.

5 Recordings serve as powerful storytelling tools for journalists and documentarians working  
6 in audio or visual mediums. For example, in the recent documentary series *The Trials of Gabriel*  
7 *Fernandez*, filmmaker Brian Knappenberger explored the habitual abuse and eventual murder of an  
8 8-year-old boy by his mother and her boyfriend, as well as the systemic failings within the Los  
9 Angeles Department of Children and Family Services that may have led to the department’s failure  
10 to protect the boy. Knappenberger incorporated footage of the Los Angeles trial of Fernandez’s  
11 mother and her boyfriend into the series, after experiencing firsthand the unique impact of seeing  
12 and hearing the events of the trial: “We were listening to the testimony of first responders, and it  
13 was just so powerful and so moving . . . I’d heard of Gabriel’s story before when it broken [sic] the  
14 L.A. Times, but I didn’t quite understand how intense it was . . . It stuck with [the first responders]  
15 and it stuck with me.” Ashlie D. Stevens, *How the Fallout from Gabriel Fernandez’s Harrowing*  
16 *Murder Inspired Netflix’s Must-Watch Docuseries*, Salon (Feb. 26, 2020), [https://perma.cc/N2Y7-](https://perma.cc/N2Y7-9MMP)  
17 [9MMP](https://perma.cc/N2Y7-9MMP).

18 Similarly, in the critically acclaimed documentary *Paradise Lost: The Child Murders at*  
19 *Robin Hood Hills*, filmmakers Joe Berlinger and Bruce Sinofsky made use of a “fair amount of  
20 footage from the original trial[s]” to paint a vivid picture of the three teenaged murder defendants  
21 that would not have been possible based on a transcript alone. Mike D’Angelo, *Paradise Lost*  
22 *Shows that Charisma Doesn’t Need Movie-Star Looks*, AV Club (May 23), [https://perma.cc/HGZ8-](https://perma.cc/HGZ8-7RBH)  
23 [7RBH](https://perma.cc/HGZ8-7RBH) (featuring a defendant’s testimony). Describing a visual recording of one of the defendants’  
24 testimony, one critic observed, “[W]hat comes across in this footage—and in all of *Paradise Lost*’s  
25 trial footage—is how earnest, polite, and cooperative [the defendant] is.” *Id.* The documentary is  
26 credited with bringing national attention to the case and with raising questions as to the sufficiency  
27  
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1 of the evidence against the three defendants, keeping the case in the public eye until the men were  
2 ultimately freed from prison in 2011. *See* Campbell Robertson, *Deal Free ‘West Memphis Three’ in*  
3 *Arkansas*, N.Y. Times (Aug. 19, 2011), <https://perma.cc/2WKQ-WNNU>.

4 Courtroom footage has served as an important component of several other investigative  
5 documentaries, including the series *Making a Murderer*, which incorporated video recordings of  
6 trial testimony and depositions in its exploration of the arrests and murder trials of Wisconsin’s  
7 Steven Avery and Brendan Dassey. *See Making a Murderer: Eighteen Years Lost*, at 5:05 (Netflix  
8 2015) (featuring one of the many instances in which the documentarian used video footage of  
9 depositions of family members of the defendants). The series initiated a national conversation  
10 regarding the case and, in particular, concerns relating to Dassey’s confession. *See* Ariane de  
11 Vogue & Eli Watkins, *Supreme Court Won’t Take up ‘Making a Murderer’ Case*, CNN (June 25,  
12 2018), <https://perma.cc/CQ22-768F>. And, in 2017, Emmy award-winning documentarian David  
13 Sutcliffe sought and obtained access to recordings played during a criminal trial in which a  
14 defendant—and failed Congressional candidate—described his plans to attack a predominately  
15 Muslim town in New York. Order Granting Mot. of Non-Party David F. Sutcliffe for Access to  
16 Certain Trial Exs., *U.S. v. Doggart*, No. 1:15-CR-39 (E.D. Tenn. Oct. 30, 2017). Sutcliffe utilized  
17 these recordings in a documentary film illustrating the defendant’s violent plot, his arrest, and a  
18 community’s efforts to draw national attention to the incident. David Felix Sutcliffe, *White Fright*  
19 *trailer*, Vimeo (Feb. 22, 2018), <https://vimeo.com/257055941> (audio recording used at the 38-  
20 second mark of the film trailer).

21 The distinct power of such audio-visual recordings allows the news media and  
22 documentarians to report to the public in a more visceral and compelling manner than through mere  
23 quotation from a cold transcript. Access to recordings of trial proceedings thereby aids the public in  
24 its oversight of the judicial system and the effective functioning of government.

1           2.       Public access to recordings of judicial proceedings guards against inaccurate  
2                   portrayals of those proceedings.

3           Access to recordings of judicial proceedings allows journalists and the broader public to  
4 more easily disprove inaccurate and misleading information about those proceedings with ready  
5 access to primary source material. *Katzmann v. Victoria's Secret Catalogue (in re Courtroom TV)*,  
6 923 F. Supp. 580, 587 (S.D.N.Y. 1996) (reporting on judicial proceedings “frequently is *more*  
7 accurate and comprehensive when cameras are present”) (emphasis added); *In re Application of*  
8 *CBS, Inc.*, 828 F.2d at 960 (“Because the videotape may in fact be more accurate evidence than a  
9 transcript . . . it’s availability to the media may enhance the accurate reporting of trials.”). Armed  
10 with a recording, a reporter can provide a more complete picture to his or her audience.

11           This principle is highlighted by the differences of interpretation that can occur when  
12 journalists lack access to tapes from judicial proceedings. For example, in 2014, *The New York*  
13 *Times* posted a humorous dramatization of a deposition from an Ohio public-records case based  
14 exclusively on a transcript. Brett Weiner, *Verbatim: What is a Photocopier?*, New York Times Op-  
15 Docs: Season 3 (Apr. 27, 2014), <https://nyti.ms/2EOKLIT>. Played for comedic effect, the  
16 dramatization shows a heated, emotional argument between the lawyer, David Marburger, and the  
17 witness; but, according to Marburger, this depiction deviated greatly from the conduct of the actual  
18 deposition: “[It] wasn’t angry; there was no standing up, no shouting; nothing like the video.”  
19 Michael K. McIntyre, *Cleveland Lawyer Whose Deposition Now is a New York Times*  
20 *Dramatization Says They Got the Dialogue Right, but the Emotions Wrong*, Cleveland Plain Dealer  
21 (Apr. 29, 2014), <https://perma.cc/ZWM8-9PVN>.

22           During the 2018 criminal trial of comedian Bill Cosby, observers reported differing  
23 recollections of Cosby’s response when a prosecutor accused him of being a flight risk. Mensah M.  
24 Dean, *Why are Cameras Still out of Order in Pa. Courts*, Philadelphia Inquirer (July 15, 2018),  
25 <https://perma.cc/8XUD-AG98> (“[T]he discrepancy couldn’t be resolved definitively because  
26 cameras and recording devices are not permitted in Pennsylvania trial courtrooms, even though  
27 most states green-lighted the use of such technology in courts years ago.”). Some publications

1 reported that Cosby referred to himself in the third person when responding to the prosecutor’s  
2 statement that Cosby owned a plane, while others described his response as being in the first person.  
3 *See id.* (“Most journalists reported that he’d spoken of himself in the third person: ‘He doesn’t have  
4 a plane, you a——!’”); *Bill Cosby Found Guilty in Sexual Assault Trial*, CNN Newsroom (Apr. 26,  
5 2018), <https://perma.cc/Y8BB-MQ8G> (“You were in the courtroom when . . . one of the prosecutors  
6 said [Cosby] has a plane, [and] he shouted, ‘I don’t have a plane.’”). In these and other instances,  
7 audio and video recordings provide the press and the public with access to more accurate  
8 information and act as a primary resource against which such discrepancies may be resolved.

9 C. Video and audio recordings enhance reporting on matters of historic significance.

10 As this Court has recognized, the Recordings constitute “an undeniably important historical  
11 record.” *Perry*, 302 F. Supp. 3d at 1049. The first federal case to decide the constitutionality of a  
12 ban on same-sex marriage, the Court’s decision in *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921  
13 (N.D. Cal. 2010) has already been the subject of a documentary,<sup>1</sup> a Broadway play,<sup>2</sup> and a  
14 network TV docuseries.<sup>3</sup> The historical significance of the case ensures that it will continue to be  
15 studied, documented, adapted, and reported on for years to come—further underscoring the  
16 significant public interest in the Recordings.

17 This public interest is reflected by the U.S. Supreme Court’s decision to release same-day  
18 audio of oral arguments in the three same-sex marriage cases heard by the Court to date:  
19 *Hollingsworth v. Perry*, 570 U.S. 693 (2013), in which the Court concluded that Proponents’ did not  
20 have standing to appeal the district court’s decision in *Perry v. Schwarzenegger*; *United States v.*  
21 *Windsor*, 570 U.S. 744 (2013), in which the Court found Section 3 of the Defense of Marriage Act  
22 unconstitutional; and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), in which the Court held that the  
23 U.S. Constitution affords same-sex couples a right to marry nationwide. Under the Court’s standard  
24 practice, transcripts of oral arguments are provided at the end of each day, but audio recordings are  
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26  
27 <sup>1</sup> The Case Against 8 (HBO 2014).

<sup>2</sup> Dustin Lance Black, 8 (2011).

<sup>3</sup> When We Rise (ABC 2017).

1 not released until the end of the week in which they are heard. *Transcripts and Recordings of Oral*  
2 *Arguments (March 2018)*, SUPREMECOURT.GOV, <https://perma.cc/988L-H2LL> (last accessed April  
3 29, 2020). However, in each of the three same-sex marriage cases, the Court announced that it  
4 would release both an audio recording *and* unofficial transcript on the same day of the arguments,  
5 thus allowing the news media to incorporate audio from the proceedings in its reporting. *See* Lyle  
6 Denniston, *Court to Release Same-Day Audio for Same-Sex Marriage Cases*, SCOTUSblog (Mar.  
7 5, 2015), <https://perma.cc/KQ9V-KE55>; Adam Liptak, *Court Announces Early Release of Same-Sex*  
8 *Marriage Arguments*, N.Y. Times (Mar. 19, 2013), <https://perma.cc/2BCH-WQ7A>. Until the  
9 Court’s recent decision to provide a live audio feed of oral arguments held in May 2020 due to the  
10 coronavirus pandemic, the three same-sex marriage cases ranked among only 27 cases in the  
11 Court’s history for which same-day audio was made available to the press and the public. *See*  
12 *Supreme Court to Allow Same-Day Audio in Travel Ban Case*, Fix the Court (April 13, 2018),  
13 <https://perma.cc/K2PV-UYNL>. The Supreme Court’s decision to provide same-day audio of the  
14 *Hollingsworth*, *Windsor*, and *Obergefell* oral arguments underscores the value of recordings when  
15 reporting on judicial proceedings of historic significance, such as those concerning the  
16 constitutionality of same-sex marriage.

17         The value of recordings like those at issue here is not limited to contemporaneous reporting.  
18 Access to recordings of historic trials allows the news media and documentary filmmakers to  
19 explore the lessons learned from past proceedings. For example, sixty-five years after the first  
20 international criminal trials were held in Nuremburg, Germany in 1945, critics applauded a  
21 documentary film incorporating audio and video from the trials for its “newness and freshness” in  
22 allowing audiences to hear, for the first time, “the rationalizations of the Nazi leaders in their own  
23 voices” and for offering insight into then-reemerging issues in international law and policy. *See*  
24 Terry Carter, *A Long-Forgotten Film on the Nuremburg Trials Helps Rekindle Interest in the*  
25 *Holocaust*, ABA Journal (Feb. 1, 2011), <https://perma.cc/7T5M-8CQD>; *see also* A.O. Scott, *Rare*  
26 *Scenes Re-Emerge from Nuremburg Trials*, N.Y. Times (Sept. 28, 2010), [https://perma.cc/CH68-](https://perma.cc/CH68-P4QD)  
27 [P4QD](https://perma.cc/CH68-P4QD) (noting that despite the breadth of other material available about the Nuremburg trials,

1 “[c]ourtroom scenes—of [defendants] and others in the dock, listening on headphones as their deeds  
2 are enumerated and explained . . . arrive with the sickening shock of discovery, and with the  
3 anguished question that must have been on many minds in 1945: how did this happen?”).

4 *Perry v. Schwarzenegger* was an historic, first-of-its-kind judicial proceeding. Public  
5 interest in the trial, and its role in the history and evolution of civil liberties, will continue for  
6 generations. Providing access to the Recordings will allow the news media and documentarians to  
7 engage in robust, nuanced reporting on a matter of vital historic significance for decades to come, in  
8 a way that would be otherwise impossible.

9 **III. Any continued sealing of the Recordings must be narrowly tailored.**

10 This Court’s Order provides that, absent “compelling reasons for the seal to remain in place  
11 for an additional period of time,” the Recordings shall be unsealed on August 12, 2020. *Perry*, 302  
12 F. Supp. 3d at 1049. Proponents have offered no such compelling reasons for the seal to remain in  
13 place, nor have they identified any new evidence or changed circumstances which would justify  
14 continued sealing of the Recordings. Rather, Proponents merely reiterate the same generalized  
15 privacy concerns this Court found unpersuasive two years ago. *See id.* at 1055. However, even  
16 assuming, *arguendo*, that the Court were to find compelling interests sufficient to overcome the  
17 strong presumption in favor of access, wholesale continued sealing of the Recordings would not be  
18 justified. Rather, any continued restriction must be “narrowly tailored” to serve that interest. *See*  
19 Civil Local Rule 79-5(b) (requiring that sealing requests “be narrowly tailored to seek sealing only  
20 of sealable material”); *see also Oliner v. Kontrabecki*, 745 F.3d 1024, 1026 (9th Cir. 2014) (“We  
21 have explained that, at least in the context of civil proceedings, the decision to seal [an] entire  
22 record . . . must be necessitated by a compelling governmental interest and [be] narrowly tailored to  
23 that interest.”) (quoting *Perez–Guerrero v. U.S. Att’y. Gen.*, 717 F.3d 1224, 1235 (11th Cir.2013)).

24 Here, fifteen of the original witnesses for the plaintiffs in the trial have provided declarations  
25 in support of unsealing the Recordings, *see* Plaintiffs’ Opp’n to Mot. to Continue the Seal at 9, Ex.  
26 B-P, and in 2012, one of the witnesses for the Proponents published an op-ed in *The New York*  
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1 *Times* in support of gay marriage. *See* KQED Inc.’s Opp’n to Defs.-Intervenors’ Mot. to Continue  
2 the Seal at 20. Proponents have put forth no new or compelling evidence of a potential threat to the  
3 remaining witness’s privacy or security sufficient to overcome the strong presumption in favor of  
4 access to the Recordings. However, should the Court conclude that a compelling interest does exist,  
5 it should employ the least restrictive means to protect that interest, for example, by redacting the  
6 testimony of the objecting witness in part or in whole, and unsealing the remainder of the  
7 Recordings.

8 **CONCLUSION**

9 For the foregoing reasons, amici respectfully request that the Court deny Proponents’  
10 Motion to Continue the Seal and that the Court release the Recordings to Movant on August 12,  
11 2020, consistent with the Court’s January 18, 2017 in this case.

12  
13 Dated: May 13, 2020

Respectfully submitted,

14  
15 /s/ Katie Townsend  
16 Katie Townsend  
17 THE REPORTERS COMMITTEE  
18 FOR FREEDOM OF THE PRESS  
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1 **APPENDIX A**

2 Descriptions of Amici Curiae

3 **The Reporters Committee for Freedom of the Press** is an unincorporated nonprofit  
4 association founded by leading journalists and media lawyers in 1970 when the nation’s news  
5 media faced an unprecedented wave of government subpoenas forcing reporters to name  
6 confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae  
7 support, and other legal resources to protect First Amendment freedoms and the newsgathering  
8 rights of journalists.

9 **The Associated Press** (“AP”) is a news cooperative organized under the Not-for-Profit  
10 Corporation Law of New York. The AP’s members and subscribers include the nation’s  
11 newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP  
12 operates from 280 locations in more than 100 countries. On any given day, AP’s content can reach  
13 more than half of the world’s population.

14 **Berkeleyside Inc.** publishes Berkeleyside, one of the leading independent, online news sites  
15 in the country. For 10 years, Berkeleyside has provided in-depth civic and accountability journalism  
16 on Berkeley, CA.

17 **Boston Globe Media Partners, LLC** publishes The Boston Globe, the largest daily  
18 newspaper in New England.

19 **BuzzFeed** is a social news and entertainment company that provides shareable breaking  
20 news, original reporting, entertainment, and video across the social web to its global audience of  
21 more than 200 million.

22 **Cable News Network, Inc.** (“CNN”), a Delaware corporation, is a wholly owned subsidiary  
23 of Turner Broadcasting System, Inc., which is ultimately a wholly-owned subsidiary of AT&T Inc.,  
24 a publicly traded company. CNN is a portfolio of two dozen news and information services across  
25 cable, satellite, radio, wireless devices and the Internet in more than 200 countries and territories  
26 worldwide. Domestically, CNN reaches more individuals on television, the web and mobile devices  
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1 than any other cable TV news organization in the United States; internationally, CNN is the most  
2 widely distributed news channel reaching more than 271 million households abroad; and CNN  
3 Digital is a top network for online news, mobile news and social media. Additionally, CNN  
4 Newsource is the world's most extensively utilized news service partnering with hundreds of local  
5 and international news organizations around the world.

6 **The California News Publishers Association** (“CNPA”) is a nonprofit trade association  
7 representing the interests of over 400 daily, weekly and student newspapers and news websites  
8 throughout California.

9 **Californians Aware** is a nonpartisan nonprofit corporation organized under the laws of  
10 California and eligible for tax exempt contributions as a 501(c)(3) charity pursuant to the Internal  
11 Revenue Code. Its mission is to foster the improvement of, compliance with and public  
12 understanding and use of, the California Public Records Act and other guarantees of the public's  
13 rights to find out what citizens need to know to be truly self-governing, and to share what they  
14 know and believe without fear or loss.

15 **CalMatters** is a nonpartisan, nonprofit journalism organization based in Sacramento,  
16 California. It covers state policy and politics, helping Californians to better understand how their  
17 government works while serving the traditional journalistic mission of bringing accountability and  
18 transparency to the state's Capitol. The work of its veteran journalists is shared, at no cost, with  
19 more than 180 media partners throughout the state.

20 **Dow Jones & Company** is the world's leading provider of news and business information.  
21 Through *The Wall Street Journal*, *Barron's*, MarketWatch, Dow Jones Newswires, and its other  
22 publications, Dow Jones has produced journalism of unrivaled quality for more than 130 years and  
23 today has one of the world's largest newsgathering operations. Dow Jones's professional  
24 information services, including the Factiva news database and Dow Jones Risk & Compliance,  
25 ensure that businesses worldwide have the data and facts they need to make intelligent decisions.  
26 Dow Jones is a News Corp company.

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1           **The E.W. Scripps Company** serves audiences and businesses through local television, with  
2 60 television stations in 42 markets. Scripps also owns Newsy, the next-generation national news  
3 network; podcast industry leader Stitcher; national broadcast networks Bounce, Grit, Escape, Laff  
4 and Court TV; and Triton, the global leader in digital audio technology and measurement services.  
5 Scripps serves as the long-time steward of the nation’s largest, most successful and longest-running  
6 educational program, the Scripps National Spelling Bee.

7           **Embarcadero Media** is a Palo Alto-based 40-year-old independent and locally-owned  
8 media company that publishes the Palo Alto Weekly, Pleasanton Weekly, Mountain View Voice  
9 and Menlo Park Almanac, as well as associated websites. Its reporters regularly rely on the  
10 California Public Records Act to obtain documents from local agencies.

11           **First Amendment Coalition** is a nonprofit public interest organization dedicated to  
12 defending free speech, free press and open government rights in to make government, at all levels,  
13 more accountable to the people. The Coalition’s mission assumes that government transparency  
14 and an informed electorate are essential to a self-governing democracy. To that end, we resist  
15 excessive government secrecy (while recognizing the need to protect legitimate state secrets) and  
16 censorship of all kinds.

17           **First Look Media Works, Inc.** is a non-profit digital media venture that produces The  
18 Intercept, a digital magazine focused on national security reporting. First Look Media Works  
19 operates the Press Freedom Defense Fund, which provides essential legal support for journalists,  
20 news organizations, and whistleblowers who are targeted by powerful figures because they have  
21 tried to bring to light information that is in the public interest and necessary for a functioning  
22 democracy.

23           Directly and through affiliated companies, **Fox Television Stations, LLC**, owns and  
24 operates 28 local television stations throughout the United States. The 28 stations have a collective  
25 market reach of 37 percent of U.S. households. Each of the 28 stations also operates Internet  
26 websites offering news and information for its local market.

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1           **Gannett** is the largest local newspaper company in the United States. Our 260 local daily  
2 brands in 46 states and Guam — together with the iconic USA TODAY — reach an estimated  
3 digital audience of 140 million each month.

4           **Hearst** is one of the nation’s largest diversified media, information and services companies  
5 with more than 360 businesses. Its major interests include ownership of 15 daily and more than 30  
6 weekly newspapers, including the San Francisco Chronicle, Houston Chronicle, and Albany Times  
7 Union; hundreds of magazines around the world, including Cosmopolitan, Good Housekeeping,  
8 ELLE, Harper’s BAZAAR and O, The Oprah Magazine; 31 television stations such as KCRA-TV  
9 in Sacramento, Calif. and KSBW-TV in Monterey/Salinas, CA, which reach a combined 19 percent  
10 of U.S. viewers; ownership in leading cable television networks such as A&E, HISTORY, Lifetime  
11 and ESPN; global ratings agency Fitch Group; Hearst Health; significant holdings in automotive,  
12 electronic and medical/pharmaceutical business information companies; Internet and marketing  
13 services businesses; television production; newspaper features distribution; and real estate.

14           **The Inter American Press Association (IAPA)** is a not-for-profit organization dedicated to  
15 the defense and promotion of freedom of the press and of expression in the Americas. It is made up  
16 of more than 1,300 publications from throughout the Western Hemisphere and is based in Miami,  
17 Florida.

18           **The International Documentary Association (IDA)** is dedicated to building and serving  
19 the needs of a thriving documentary culture. Through its programs, the IDA provides resources,  
20 creates community, and defends rights and freedoms for documentary artists, activists, and  
21 journalists.

22           **The Investigative Reporting Workshop**, based at the School of Communication (SOC) at  
23 American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth  
24 stories at [investigativereportingworkshop.org](http://investigativereportingworkshop.org) about government and corporate accountability,  
25 ranging widely from the environment and health to national security and the economy.

26           **Los Angeles Times Communications LLC** and **The San Diego Union-Tribune, LLC** are  
27 two of the largest daily newspapers in the United States. Their popular news and information  
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1 websites, www.latimes.com and www.sduniontribune.com, attract audiences throughout California  
2 and across the nation.

3 **The Media Institute** is a nonprofit foundation specializing in communications policy issues  
4 founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive  
5 media and communications industry, and excellence in journalism. Its program agenda  
6 encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online  
7 services.

8 **Mother Jones** is a nonprofit, reader-supported news organization known for ground-  
9 breaking investigative and in-depth journalism on issues of national and global significance.

10 **MPA – The Association of Magazine Media** (“MPA”) is the industry association for  
11 magazine media publishers. The MPA, established in 1919, represents the interests of close to  
12 100 magazine media companies with more than 500 individual magazine brands. MPA’s  
13 membership creates professionally researched and edited content across all print and digital media  
14 on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or  
15 pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment  
16 issues.

17 **The National Press Photographers Association** (“NPPA”) is a 501(c)(6) non-profit  
18 organization dedicated to the advancement of visual journalism in its creation, editing and  
19 distribution. NPPA’s members include television and still photographers, editors, students and  
20 representatives of businesses that serve the visual journalism industry. Since its founding in 1946,  
21 the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the  
22 press in all its forms, especially as it relates to visual journalism. The submission of this brief was  
23 duly authorized by Mickey H. Osterreicher, its General Counsel.

24 **The New York Times Company** is the publisher of *The New York Times* and *The*  
25 *International Times*, and operates the news website nytimes.com.

26 **The News Leaders Association** was formed via the merger of the American Society of  
27 News Editors and the Associated Press Media Editors in September 2019. It aims to foster and  
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1 develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest  
2 and transparent government; to fight for free speech and an independent press; and to nurture the  
3 next generation of news leaders committed to spreading knowledge that informs democracy.

4 **The Online News Association** is the world’s largest association of digital journalists.  
5 ONA’s mission is to inspire innovation and excellence among journalists to better serve the public.  
6 Membership includes journalists, technologists, executives, academics and students who produce  
7 news for and support digital delivery systems. ONA also hosts the annual Online News Association  
8 conference and administers the Online Journalism Awards.

9 **POLITICO** is a global news and information company at the intersection of politics and  
10 policy. Since its launch in 2007, POLITICO has grown to nearly 300 reporters, editors and  
11 producers. It distributes 30,000 copies of its Washington newspaper on each publishing day and  
12 attracts an influential global audience of more than 35 million monthly unique visitors across its  
13 various platforms.

14 **Radio Television Digital News Association** (“RTDNA”) is the world’s largest and only  
15 professional organization devoted exclusively to electronic journalism. RTDNA is made up of news  
16 directors, news associates, educators and students in radio, television, cable and electronic media in  
17 more than 30 countries. RTDNA is committed to encouraging excellence in the electronic  
18 journalism industry and upholding First Amendment freedoms.

19 **Reveal from The Center for Investigative Reporting**, founded in 1977, is the nation’s  
20 oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website  
21 <https://www.revealnews.org/>, the Reveal national public radio show and podcast, and various  
22 documentary projects. Reveal often works in collaboration with other newsrooms across the  
23 country.

24 **Sinclair** is one of the largest and most diversified television broadcasting companies in the  
25 country. The Company owns, operates and/or provides services to 191 television stations in 89  
26 markets. The Company is a leading local news provider in the country and has multiple national  
27 networks, live local sports production, as well as stations affiliated with all the major networks.

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1           **The Society of Environmental Journalists** is the only North-American membership  
2 association of professional journalists dedicated to more and better coverage of environment-related  
3 issues.

4           **Society of Professional Journalists** (“SPJ”) is dedicated to improving and protecting  
5 journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to  
6 encouraging the free practice of journalism and stimulating high standards of ethical behavior.  
7 Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-  
8 informed citizenry, works to inspire and educate the next generation of journalists and protects First  
9 Amendment guarantees of freedom of speech and press.

10           **TEGNA Inc.** owns or services (through shared service agreements or other similar  
11 agreements) 46 television stations in 38 markets.

12           **The Tully Center for Free Speech** began in Fall, 2006, at Syracuse University's S.I.  
13 Newhouse School of Public Communications, one of the nation's premier schools of mass  
14 communications.

15           **Univision Communications Inc.** (UCI) is the leading media company serving Hispanic  
16 America. UCI is a leading content creator in the U.S. and includes the Univision Network, UniMás  
17 and Univision Cable Networks.

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