

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020
Washington, D.C. 20005
(202) 795-9300
www.rcfp.org

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

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*Affiliations appear only
for purposes of identification.*

By email

October 7, 2020

Scott S. Harris
Clerk of the Court
Supreme Court of the United States
1 First Street NE
Washington, DC 20543

Dear Mr. Harris,

Thank you for your letter, dated September 3, 2020, responding to the news media coalition letter of December 16, 2019, that encouraged the Supreme Court to adopt a rule addressing the sealing of court records.

The Reporters Committee, NPR, and their partners on that letter are very happy to hear that the Court agrees that reducing its sealing procedures and practices to a formal rule could provide a benefit. You mentioned that you are interested in continuing this dialogue after you have specific language that you can share. On behalf of the coalition, I would be delighted to speak with you and provide any additional assistance that may be helpful.

As you mentioned, we understand that in the great majority of instances where the Court authorizes the filing of documents under seal, those documents were sealed in the lower court, usually because sealing is required by statute or rule or because the lower court determined that the particular privacy interests at stake warrant sealing.

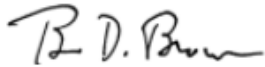
We would strongly encourage the Court to adopt a rule—such as the one proposed in our letter and attached here as Exhibit A—that does not permit parties to file documents under seal automatically, simply because a lower court allowed it. Rather, our proposed rule would require any party seeking sealing to file a motion to seal—which we understand is the normal practice in the Court anyway—and it must specifically identify the information sought to be sealed and explain why such sealing is necessary and narrowly tailored. This would properly place the burden of overcoming the presumption of openness on the party seeking secrecy and reduce the administrative burden on the Court by discouraging frivolous motions to seal.

We do not take this position lightly. During our review, we found a variety of cases before the Court that appeared to defy the normal presumption of open access; indeed, we found cases where a lower court had permitted sealing, but where secrecy had never been necessary or was no longer necessary. *See, e.g., Goynes v. Nebraska*, No. 19-6267 (ordering appendix sealed although search warrant and affidavit had already been made public); *Price v. Dunn*, No. 18A1238 (granting RCFP and NPR's motions to intervene and unseal redacted briefs that the state did not oppose, after the Court had permitted the

filing of those briefs based only on the state's request and on the magistrate judge's protective order governing discovery).

Again, we are pleased to hear that you will evaluate the matter further and expect to issue a new rule in the near future.

Yours very truly,

A handwritten signature in black ink that reads "B. D. Brown". The signature is written in a cursive, slightly slanted style.

Bruce D. Brown

EXHIBIT A

Rule 29.8 — Sealing Records

1) *Presumption of Public Record.* Every document filed in or by this Court (whether or not the document was sealed in the lower court) shall be available to the public for inspection unless ordered by this Court to be sealed.

2) *Motions to Seal.* A motion to seal shall:

- a) Include, to the extent it exists, a copy of the lower court's sealing order, as well as any written explanation provided by that court for the sealing;
- b) Identify with specificity the documents or portions thereof for which sealing is requested;
- c) Provide a detailed description of the compelling interest to be furthered by sealing and why this interest overrides the presumption of openness;
- d) Demonstrate that the sealing request is narrowly tailored and that less restrictive alternatives to sealing will not afford adequate protection;
- e) State the period of time the party seeks to have the material maintained under seal; and
- f) Include a redacted public version of the document or demonstrate why a public version cannot be filed. Requests to seal entire documents and briefs without providing a redacted copy to the public are disfavored.

3) *Temporary Sealing Pending Resolution.* Documents that are the subject of a motion to seal shall be temporarily withheld from the public, pending resolution of the motion to seal.