

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE APPLICATION OF  
PENNLIVE, YORK DAILY  
RECORD, AND YORK DISPATCH  
TO UNSEAL COURT RECORDS

Misc. Action No. \_\_\_\_\_

APPLICATION OF PENNLIVE, YORK DAILY RECORD, AND YORK  
DISPATCH TO UNSEAL COURT RECORDS

1. PennLive, York Daily Record, and York Dispatch (“Applicants”) respectfully move this Court for an order unsealing judicial records related to a warrant obtained pursuant to **Federal Rule of Criminal Procedure 41** that authorized the seizure of U.S. Representative Scott Perry’s cell phone on August 9, 2022. *See* Kaity Assaf, *U.S. Rep. Scott Perry Sues DOJ After It Seized His Cell Phone*, York Daily Record (Aug. 24, 2022), <https://perma.cc/UQ2U-P8T4>; Emergency Motion for Return of Seized Property (“Emergency Motion”) at 1, *Perry v. United States*, No. 1:22-mc-00079 (D.D.C. Aug. 18, 2022) (**ECF No. 1**).

2. Specifically, Applicants seek an order unsealing the executed warrant, the warrant application, any supporting affidavits, the return, the docket sheet, any subsequent warrants issued, and any other judicial records related to the warrant (the “Warrant Materials”).

## INTEREST OF THE APPLICANTS

3. Petitioner PennLive is the largest newspaper serving the Harrisburg, Pennsylvania Metropolitan Area with print and digital news. Its headquarters are in Cumberland County at 1900 Patriot Drive, Mechanicsburg, PA 17050.

4. Petitioner York Daily Record is a publication whose ultimate parent company is Gannett Co., Inc., the largest local newspaper company in the United States. York Daily Record's Daily Record/Sunday News publishes a daily print edition as well as an e-edition at ydr.com.

5. Petitioner York Dispatch was founded in 1876 by Hiram Young. It is the longest continuously published newspaper in York County. A longtime evening publication, York Dispatch is now published weekday mornings by York Dispatch Publishing Co. The news outlet also publishes online at yorkdispatch.com.

6. Like all members of the press and public, Applicants have a strong interest in understanding the disposition of matters by federal courts, especially where the federal government has applied for and obtained judicial authorization to take investigative steps that implicate "important constitutional rights such as the Fourth Amendment protection against unreasonable searches and seizures."

*United States v. Bus. of Custer Battlefield Museum & Store*, 658 F.3d 1188, 1194

(9th Cir. 2011) (quoting *In re N.Y. Times Co.*, 585 F. Supp. 2d 83, 90 (D.D.C. 2008)).

7. In any case where a member of the press or public seeks access to warrant materials, there is a keen public interest in transparency. That need for transparency is at its apex where an investigation may also implicate the “powerful public interest” in understanding potential misconduct by a sitting public official, *In re L.A. Times Commc’ns LLC*, 28 F.4th 292, 298 (D.C. Cir. 2022), as well as the heightened separation-of-power concerns raised by a search that may have “resulted in the disclosure of legislative materials to agents of the Executive,” *United States v. Rayburn House Off. Bldg.*, 497 F.3d 654, 661 (D.C. Cir. 2007).

### **FACTUAL AND PROCEDURAL BACKGROUND**

8. Congressman Scott Perry has been a Member of Congress since 2013 and currently represents Pennsylvania’s 10th congressional district. *See* Biography, United States Congressman Scott Perry, <https://perma.cc/M3B4-MWKF>.

9. On August 9, 2022 the Federal Bureau of Investigation (“FBI”) executed a warrant to seize Congressman Perry’s cell phone while he was on vacation with his family in New Jersey. *See* Assaf, *supra*. Congressman Perry promptly shared news of the seizure with the press in a statement given to Fox News. *See* Paul Steinhauser, *Trump Ally Rep. Scott Perry Says the FBI Seized His*

*Cellphone One Day After Mar-a-Lago Raid*, Fox News (Aug. 9, 2022),

<https://perma.cc/YQ2E-VUA8>.

10. According to a motion that Congressman Perry filed on August 18 seeking the return of data cloned from his phone, the warrant was issued by United States Magistrate Judge Susan E. Schwab of the United States District Court for the Middle District of Pennsylvania on August 2. *See* Emergency Motion at 1.

11. As multiple news outlets reported at the time, the investigative step was “taken in connection with an escalating federal investigation into efforts by several close allies of former President Donald J. Trump to overturn the 2020 election.” Alan Feuer et al., *Seizure of Congressman’s Phone Is Latest Sign of Escalating Election Inquiry*, N.Y. Times (Aug. 10, 2022), <https://perma.cc/YDT9-FFLS>; *see also* Perry Stein, *FBI Takes Rep. Scott Perry’s Phone as Part of Fake-Elector Investigation*, Wash. Post (Aug. 9, 2022), <https://perma.cc/9R86-25FV>.

12. Congressman Perry’s motion confirms that the seizure was related to activities of the Justice Department’s Office of the Inspector General, which “is taking the lead on the election subversion investigation.” Nicholas Wu & Kyle Cheney, *Why Scott Perry Stands Out in the FBI’s Investigations of Trump Allies*, Politico (Aug. 10, 2022), <https://perma.cc/74TN-72JV>; *see also* Emergency Motion at 2 (noting that the warrant authorized taking the phone “to the DOJ-OIG forensic laboratory”).

13. Extensive information about Congressman Perry’s involvement in the events under investigation has already been made public as a result of both media reporting and the work of congressional investigators. For instance, “[a]ccording to evidence released by the House committee investigating the Jan. 6 attack on the U.S. Capitol, Perry reportedly played a key role in an effort to install an attorney general who backed Trump’s false claims of election fraud, and who would further plans to install Trump-supporting electors in states including Pennsylvania, won by President Joe Biden.” David Wenner, *Scott Perry Losing Support Over Jan. 6 Allegations, Poll by Democratic Opponent Says*, PennLive (Aug. 16, 2022), <https://perma.cc/565P-JT6G>.

14. The evidence made public by the House committee included witness testimony, White House visitor records, and text message exchanges documenting Perry’s role in introducing that Attorney General candidate—then-Acting Assistant Attorney General Jeffrey Clark—to former President Trump. *See* Wu & Cheney, *supra*. Clark’s phone was likewise seized in connection with the inspector general’s probe, which “is investigating felony violations of false statements, conspiracy and obstruction.” Tierney Sneed & Katelyn Polantz, *Jeffrey Clark Told DC Bar that DOJ Search of his Home Linked to False Statements, Conspiracy, Obstruction Investigation*, CNN (Sept. 14, 2022), <https://perma.cc/HE96-N343>.

15. The seizure of Congressman Perry’s phone is a subject of enormous public interest. Any search of the property of a Member of Congress is a matter of paramount public concern because it raises unique separation-of-power concerns. *See, e.g.,* Krishnadev Calamur & Ryan Lucas, *The Justice Department Watchdog Will Review a Trump-Era Probe of Democratic Lawmakers*, NPR (June 11, 2021), <https://perma.cc/L8J8-Q2C8>.

16. For past searches involving Members of Congress, the Justice Department has sometimes included “special procedures” in its warrant applications to minimize infringement on legislative interests. *United States v. Rayburn House Off. Bldg.*, 497 F.3d 654, 656 (D.C. Cir. 2007); *see also* Chris Young, *Less-redacted Search Warrant Records Shed New Light on Investigation into Sen. Richard Burr*, Reporters Comm. for Freedom of the Press (Sept. 9, 2022), <https://perma.cc/QT4L-FAE4> (noting the recent unsealing of the procedures used in the Government’s investigation of Senator Richard Burr). Congressman Perry has raised such separation-of-power concerns in his motion seeking the return of data cloned from his phone. *See* Emergency Motion at 4–6.

17. The search also is of legitimate public interest because of its proximity to a contested election. The adequacy of Justice Department regulations that address taking overt investigative steps that may interfere with the orderly democratic process is a subject of recurring public debate. *See* Michelle Onibokun

& Chuck Rosenberg, *The Justice Department's Policy Against Election Interference Is Open to Abuse*, Lawfare (Sept. 11, 2020), <https://perma.cc/W8VBYM5J>.

18. Congressman Perry has maintained that the seizure is a politically motivated attempt to influence the results of his upcoming election. In an interview, the Congressman told reporters: “What happened here isn’t about January of 2021. This is about Nov. 8, 2022.” Matt Enright, *Scott Perry Says He Hasn’t Heard From FBI Since Phone Seizure*, York Dispatch (Aug. 23, 2022), <https://perma.cc/25BJ-G8T2>.

19. Since the seizure, a poll conducted by his opponent showed a decline in support for Congressman Perry. Wenner, *supra*.

20. On information and belief, the Warrant Materials are under seal.

### **REQUEST FOR RELIEF**

21. Applicants seek an order unsealing the Warrant Materials in their entirety, or, in the alternative, the unsealing of redacted versions of the Warrant Materials.

22. Applicants seek any further relief the Court deems just and proper.

Dated: September 29, 2022

Respectfully submitted,

*s/ Paula Knudsen Burke*

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*\*Pro hac vice applications pending*

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**CERTIFICATE OF SERVICE**

I, Paula Knudsen Burke, hereby certify that on the 29th day of September, 2022, a copy of the foregoing was filed electronically using this Court's CM/ECF system, and sent via U.S. Mail to:

United States Attorney's Office for the Middle District of Pennsylvania  
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Dated: September 29, 2022

*s/ Paula Knudsen Burke*

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