

No. 18-31052

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

SHANDELL MARIE BRADLEY, Tutrix on behalf of her minor child A J W
Plaintiff – Appellee,

v.

LOUIS ACKAL, Individually and in his official capacity; JUSTIN ORTIS,
Individually and in his official capacity; XYZ DEPUTIES, Individually and in
their official capacity; XYZ INSURANCE COMPANY, on behalf of Sheriff’s
Office Iberia Parish,

Defendants – Appellees

v.

CAPITAL CITY PRESS, L.L.C., doing business as *The Advocate*; KATC
COMMUNICATIONS, L.L.C.,

Movants – Appellants.

On Appeal from the United States District Court for the Western District of
Louisiana, The Honorable Patrick Hanna, U.S. Magistrate Judge
Case No. 6:15-cv-459

**MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE
PRESS, THE JOSEPH L. BRECHNER CENTER FOR FREEDOM OF
INFORMATION, AND 32 MEDIA ORGANIZATIONS FOR LEAVE TO
FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF MOVANT-
APPELLANTS SEEKING REVERSAL**

(COUNSEL LISTED ON INSIDE COVER)

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**Of counsel*

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

Pursuant to Federal Rule of Appellate Procedure 29(a)(3) and Fifth Circuit Rule 29, the Reporters Committee for Freedom of the Press (“The Reporters Committee”), The Joseph L. Brechner Center for Freedom of Information, Advance Publications, Inc., American Society of News Editors, The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia, The E.W. Scripps Company, Gannett Co., Inc., GateHouse Media, LLC, Gray Media Group, Inc., Gray Television Group, Inc., Hanna Media Inc., International Documentary Assn., Investigative Reporting Program, Investigative Reporting Workshop at American University, Louisiana Association of Broadcasters, The McClatchy Company, The Media Institute, National Freedom of Information Coalition, National Newspaper Association, The National Press Club, National Press Club Journalism Institute, National Press Photographers Association, The NewsGuild - CWA, POLITICO LLC, Public Affairs Research Council of Louisiana, Rushing Media LLC, Society of Professional Journalists, TEGNA Inc., Tribune Media Company, Tribune Publishing Company, Tribune Television New Orleans, Inc., and Tully Center for Free Speech (collectively, “*amici*”) respectfully request leave to file the brief of *amici curiae* attached as Exhibit A to this motion in support of Movant-Appellants Capital City Press, L.L.C. doing business as *The Advocate*, and KATC Communications, L.L.C. (“Media Intervenors”). Movant-

Appellants Media Intervenors consent to the filing of the brief of *amici curiae*. Plaintiff Shandell Marie Bradley has stated that she does not consent. Defendants Louis Ackal and Justin Ortis do not oppose the filing of the brief of *amici curiae*.

MOVANTS' INTEREST

The Reporters Committee is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 to combat an unprecedented wave of government subpoenas seeking the names of 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 Brechner Center for Freedom of Information (the “Brechner Center”) at the University of Florida in Gainesville exists to advance understanding, appreciation and support for freedom of information in the state of Florida, the nation and the world. Since its founding in 1977, the Brechner Center has served as a source of academic research and expertise about the law of gathering and sharing information, and the Center regularly appears as a friend-of-the-court in federal and state appellate cases nationwide where the public’s right to informed participation in government is at stake. The Center is exercising the academic freedom of its faculty to express their scholarly views, and is not submitting this brief on behalf of the University of Florida or the University of Florida Board of Trustees. Thirty-two media

organizations have joined the Reporters Committee and Brechner Center as *amici* to urge the Court to apply the First Amendment and common law rights of access and reverse the district court's denial of Media Intervenors' motion to unseal the settlement agreement at issue in this case.

As members and representatives of the news media, *amici* have a strong interest in ensuring that the press has access to court records, which are vital to its role in informing the public about developments in the federal courts—a role necessary to both fairness of the judicial system and the public's perception of its fairness.

The issue presented in this appeal—whether the district court erred in discounting the depth of the public interest in unsealing the settlement agreement in this case and overstating the privacy effects of unsealing—has potentially broad ramifications for *amici*, who depend upon access to court records, including settlements submitted to the federal courts, to fulfill their role as surrogates for the public in ensuring the proper functioning of the judicial system. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (plurality opinion).

REASONS FOR AND RELEVANCE OF THE BRIEF OF *AMICI CURIAE*

The brief of *amici curiae* provides insight into the traditional role of the press in facilitating public access to the courts as well as the significant public interest in access to the settlement agreement in this case. As representatives of the

country's major media organizations, *amici* have unique perspectives on the ways the press works to ensure the public is informed about the federal courts. *Amici* can also offer insight about how this case, in particular, and the issues presented by this case, are of significant public interest.

Public access to the courts is an essential feature of our justice system, which ensures actual fairness of the courts, encourages public trust in the judiciary, and provides community catharsis in seeing that justice is being served. Public access to the federal courts—via the surrogate that is the news media—“serves . . . to curb judicial abuses[.]” *SEC v. Van Wayenberghe*, 990 F.2d 845, 849 (5th Cir. 1993) (quoting *Littlejohn v. Bic Corp.*, 851 F.2d 673, 682 (3d Cir. 1982)). Openness of the federal courts via the press also allows the public to better understand the inner workings of the judicial system, which then leads to increased public confidence in the judiciary. *Id.*

In addition, the attached brief provides information about how press coverage of federal cases concerning police-involved shootings has specifically encouraged public trust in the judiciary's work, and allowed the public to monitor the activities of law enforcement. The attached brief outlines instances in which press coverage of settlement agreements related to police-involved shootings has allowed communities to both understand how these cases are resolved through the judicial process and gain increased trust in law enforcement after a tragedy.

The attached brief also provides a thorough analysis of the legal context of the balance between public interests and private interests in right of access cases. The brief discusses how federal courts, including this Court and the U.S. Supreme Court, have considered the privacy rights of minors versus the public's rights of access under the First Amendment and common law, often finding that a minor's privacy does not overcome the rights of access.

For the foregoing reasons, *amici* respectfully request leave to file the attached *amicus curiae* brief.

Dated: February 6, 2019

Respectfully submitted,

/s/ Bruce D. Brown

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**Of counsel*

CERTIFICATE OF SERVICE

I, Bruce D. Brown, do hereby certify that I have filed the foregoing Motion of the Reporters Committee for Freedom of the Press, Joseph L. Brechner Center for Freedom of Information and 32 Media Organizations for Leave to File Brief as *Amici Curiae* in Support of Movant-Appellants Seeking Reversal electronically with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system on February 6, 2019.

I certify that on this 6th day of February 2019, a copy of the foregoing has been served upon counsel for all parties to this proceeding as identified below through the court's electronic filing system as follows:

For Plaintiff/Appellee:

Carol D. Powell Lexing
LAW OFFICE OF CAROL D. POWELL LEXING & ASSOCIATES
2485 Tower Drive, Suite 6
Monroe, Louisiana 71201

For Movants/Appellants:

Scott L. Sternberg
Michael Finkelstein
643 Magazine Street
Suite 402
New Orleans, Louisiana 70130

I certify that on this 6th day of February 2019, a copy of the foregoing has been served upon counsel for all parties to this proceeding as identified below through U.S. Mail as follows:

For Defendants/Appellees:

L. Fred Schoeder

Craig Frosch

USRY & WEEKS, A.P.L.C.

1615 Poydras Street

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New Orleans, Louisiana 70112-1223

/s/ Bruce D. Brown

Bruce D. Brown

Counsel of Record

CERTIFICATE OF CONFERENCE

I, Bruce D. Brown, do hereby certify that *amici* spoke with Carol D. Powell Lexing, who is representing Plaintiff Shandell Bradley, about this matter on January 23, 2019, and Ms. Powell Lexing informed *amici* that her client would not consent to the relief requested herein. Media Intervenors, through their counsel Scott Sternberg, expressed their consent to the relief requested herein on January 23, 2019. Defendants Louis Ackal and Justin Ortis, through their counsel, stated that they do not oppose the filing of the brief of amici curiae on February 5, 2019.

/s/ Bruce D. Brown
Bruce D. Brown
Counsel of Record

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1006 words, as determined by the word-count function of Microsoft Word, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

2. This document complies with the type-face requirements and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) and Fifth Circuit Rules 32.1 and 32.2 because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

/s/ Bruce D. Brown
Bruce D. Brown
Counsel of Record

Dated: February 6, 2019

No. 18-31052

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FOR FREEDOM OF THE PRESS, THE JOSEPH L. BRECHNER CENTER
FOR FREEDOM OF INFORMATION, AND 32 MEDIA ORGANIZATIONS
IN SUPPORT OF MOVANTS-APPELLANTS SEEKING REVERSAL**

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**Of counsel*

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in Rules 28.2.1 and 29.2 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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Amici Curiae

1. **The Reporters Committee for Freedom of the Press** is an unincorporated nonprofit association. 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 is an unincorporated association of reporters and editors with no parent corporation and no stock.
2. **The Brechner Center for Freedom of Information** (the “Brechner Center”) at the University of Florida in Gainesville exists to advance understanding, appreciation and support for freedom of information in the state of Florida, the nation and the world. Since its founding in 1977, the Brechner Center has

served as a source of academic research and expertise about the law of gathering and sharing information, and the Center regularly appears as a friend-of-the-court in federal and state appellate cases nationwide where the public's right to informed participation in government is at stake. The Center is exercising the academic freedom of its faculty to express their scholarly views, and is not submitting this brief on behalf of the University of Florida or the University of Florida Board of Trustees. The Brechner Center for Freedom of Information is a unit of the University of Florida College of Journalism and Communications, and is not owned by any corporation, does not issue any stock, and is not owned in whole or part by any publicly traded corporation.

3. **Advance Publications, Inc.** is a diversified privately-held company that operates and invests in a broad range of media, communications and technology businesses. Its operating businesses include Conde Nast's global magazine and digital brand portfolio, including titles such as Vogue, Vanity Fair, The New Yorker, Wired, and GQ, local news media companies producing newspapers and digital properties in 10 different metro areas and states, including NOLA Media Group / The Times-Picayune, and American City Business Journals, publisher of business journals in over 40 cities. Advance Publications, Inc. ("Advance") certifies that it has no parent corporation, no publicly held corporation owns any of its stock, and its subsidiaries and affiliates are listed on Attachment A, annexed to this Certificate of Interested Persons.
4. With some 500 members, **American Society of News Editors** ("ASNE") is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers. American Society of News Editors is a private, non-stock corporation that has no parent.
5. **The Associated Press** ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP's content can reach more than half

of the world's population. The Associated Press is a global news agency organized as a mutual news cooperative under the New York Not-For-Profit Corporation law. It is not publicly traded.

6. **The Associated Press Media Editors** is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom leaders; and champions the First Amendment and promotes freedom of information. The Associated Press Media Editors has no parent corporation and does not issue any stock.
7. **Association of Alternative Newsmedia** (“AAN”) is a not-for-profit trade association for approximately 110 alternative newspapers in North America. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers. Association of Alternative Newsmedia has no parent corporation and does not issue any stock.
8. **The E.W. Scripps Company** serves audiences and businesses through television, radio and digital media brands, with 33 television stations in 24 markets. Scripps also owns 33 radio stations in eight markets, as well as local and national digital journalism and information businesses, including mobile video news service Newsy and weather app developer WeatherSphere. Scripps owns and operates an award-winning investigative reporting newsroom in Washington, D.C. and serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee. The E.W. Scripps Company is a publicly traded company with no parent company. No individual stockholder owns more than 10% of its stock.
9. **Gannett Co., Inc.** is a leading news and information company which publishes USA TODAY and more than 100 local media properties in Louisiana, Texas, Mississippi and elsewhere. Each month more than 125 million unique visitors access content from USA TODAY and Gannett's local media organizations, putting the company squarely in the Top 10 U.S. news and information category. Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. BlackRock, Inc., a publicly traded company, owns 10 percent or more of Gannett's stock.

10. **GateHouse Media** is one of the largest publishers of locally-based media in the United States. As of August 2018, we publish 145 daily newspapers, 340 community publications and more than 570 local market websites that reach more than 23 million people each week. GateHouse Media, LLC is a for-profit Delaware limited liability company (“GateHouse Media”). Ultimate Parent Company (indirect): GateHouse Media is an indirect wholly-owned subsidiary of New Media Investment Group Inc., a Delaware corporation and New York Stock Exchange publicly-traded company. Parent Company (indirect): GateHouse Media is an indirect wholly-owned subsidiary of New Media Holdings I LLC, a Delaware limited liability company (New Media Holdings I LLC is a direct wholly-owned subsidiary of New Media Investment Group Inc.). Parent Company (direct): GateHouse Media is a direct wholly-owned subsidiary of New Media Holdings II LLC, a Delaware limited liability company (New Media Holdings II LLC is an indirect wholly-owned subsidiary of New Media Investment Group Inc.)
11. **Gray Media Group, Inc.** owns Louisiana television stations in New Orleans (WVUE), Shreveport (KSLA), Baton Rouge (WAFB), and Lake Charles (KPLC). Gray Media Group, Inc. is owned by Gray Television, Inc. Gray Television, Inc. is a publicly-traded corporation and no entity holds 10% or more of its equity.
12. **Gray Television Group, Inc.,** owns Louisiana television stations in Monroe (KNOE) and Alexandria (KALB). Gray Television Group, Inc. is owned by Gray Television, Inc. Gray Television, Inc. is a publicly-traded corporation and no entity holds 10% or more of its equity.
13. **Hanna Media Inc.** and its sister corporation, Hanna Publishing Co. Inc., own and publish award-winning community newspapers in Louisiana. Hanna Media Inc. has no parent corporation and no publicly held corporation that owns 10% or more of its stock.
14. **The International Documentary Association (IDA)** is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists. The International Documentary Association is an not-for-profit organization with no parent corporation and no stock.

15. **The Investigative Reporting Program (IRP)** at UC Berkeley's Graduate School of Journalism is dedicated to promoting and protecting the practice of investigative reporting. Evolving from a single seminar, the IRP now encompasses a nonprofit newsroom, a seminar for undergraduate reporters and a post-graduate fellowship program, among other initiatives. Through its various projects, students have opportunities to gain mentorship and practical experience in breaking major stories for some of the nation's foremost print and broadcast outlets. The IRP also works closely with students to develop and publish their own investigative pieces. The IRP's work has appeared on PBS Frontline, Univision, Frontline/WORLD, NPR and PBS NewsHour and in publications such as Mother Jones, The New York Times, Los Angeles Times, Time magazine and the San Francisco Chronicle, among others. The Investigative Reporting Program is a project of the University of California, Berkeley. It issues no stock.

16. **The Investigative Reporting Workshop**, a project of the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy. The Investigative Reporting Workshop is a privately funded, nonprofit news organization affiliated with the American University School of Communication in Washington. It issues no stock.

17. **The Louisiana Association of Broadcasters (LAB)** is a non-profit association that represents 290 Louisiana television and radio stations across our great state. The LAB was founded in August of 1947 and incorporated one year later. The LAB promotes the success and prosperity of Louisiana's Broadcasters and advancement of the broadcasting industry by representing its members' position in the legislative and regulatory process in pertinent branches of State and Federal government, serving as a resource for training, revenue expansion, cost containment and information on evolving governmental policies. The LAB also encourage the highest standards in broadcasting by recognizing and sharing examples of excellence and achievement. The LAB strives to achieve our mission through the combined support, input and leadership of its broadcasting members. The Louisiana Association of Broadcasters is a 501c6 non-profit association. It has no parent corporation and is not publicly held.

18. **The McClatchy Company** is a 21st century news and information leader, publisher of iconic brands such as the Miami Herald, The Kansas City Star, The Sacramento Bee, The Charlotte Observer, The (Raleigh) News and Observer, and the (Fort Worth) Star-Telegram. McClatchy operates media companies in 28 U.S. markets in 14 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, Calif., and listed on the New York Stock Exchange under the symbol MNI. The McClatchy Company is publicly traded on the New York Stock Exchange American under the ticker symbol MNI. Chatham Asset Management, LLC and Royce & Associates, LP both own 10% or more of the common stock of The McClatchy Company.
19. **The Media Institute** is a nonprofit research foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services. The Media Institute is a 501(c)(3) non-stock corporation with no parent corporation.
20. **The National Freedom of Information Coalition** is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the District of Columbia. Through its programs and services and national member network, NFOIC promotes press freedom, litigation and legislative and administrative reforms that ensure open, transparent and accessible state and local governments and public institutions. The National Freedom of Information Coalition is a nonprofit organization that has not issued any shares or debt securities to the public, and has no parent companies, subsidiaries, or affiliates that have issued any shares or debt securities to the public.
21. **National Newspaper Association** is a 2,400 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Missouri. National Newspaper Association is a non-stock nonprofit Missouri corporation. It has no parent corporation and no subsidiaries.
22. **The National Press Club** is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most

major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors. The National Press Club is a not-for-profit corporation that has no parent company and issues no stock.

23. **The National Press Club Journalism Institute** is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life, empowering engaged citizens to shape democracy. The Institute promotes and defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity. The National Press Club Journalism Institute is a not-for-profit corporation that has no parent company and issues no stock.
24. **The National Press Photographers Association** (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel. National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock and does not own any of the party’s or amicus’ stock.
25. **The News Guild – CWA** is a labor organization representing more than 30,000 employees of newspapers, newsmagazines, news services and related media enterprises. Guild representation comprises, in the main, the the editorial and online departments of these media outlets. The News Guild is a sector of the Communications Workers of America. CWA is America’s largest communications and media union, representing over 700,000 men and women in both private and public sectors. The News Guild – CWA is an unincorporated association. It has no parent and issues no stock.
26. **POLITICO** is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to more than 350 reporters, editors and producers. It distributes 30,000 copies of its

Washington newspaper on each publishing day, publishes POLITICO Magazine, with a circulation of 33,000 six times a year, and maintains a U.S. website with an average of 26 million unique visitors per month. POLITICO LLC's parent corporation is Capitol News Company. No publicly held corporation owns 10% or more of POLITICO LLC's stock.

27. Founded in 1950, the **Public Affairs Research Council of Louisiana** (PAR) is an independent, non-partisan education and research organization that values efficient and accountable government. PAR's website features a Sunshine Headquarters portal that serves as a resource on Louisiana open governance laws and practices. The organization has been a leader in education, commentary and safeguarding of strong public records and open meetings law and culture. The Public Affairs Research Council of Louisiana is a non-profit 501(c)(3) corporation based on Baton Rouge, Louisiana, with no parent corporation and no stock.
28. **Rushing Media LLC** is the publisher of the weekly newspaper, *The Times of Houma/Thibodaux*, and related news websites as well as other local and regional periodicals in South Louisiana. Rushing Media is the largest periodical publisher in its region of the state, providing news and informational journalism to more than 100,000 readers for over 30 years. Rushing Media LLC has no parent company, and no publicly held corporation owns 10% or more of its stock.
29. **Society of Professional Journalists** ("SPJ") is dedicated to improving and protecting journalism. It is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press. Society of Professional Journalists is a non-stock corporation with no parent company.
30. **TEGNA Inc.** owns or services (through shared service agreements or other similar agreements) 49 television stations in 41 markets, including WWL-TV and WUPL-TV in New Orleans, Louisiana. TEGNA Inc. has no parent company, and no publicly-held company has a 10% or greater ownership interest in TEGNA, Inc.

31. **Tribune Media Company** owns a group of 42 television stations, plus interests in radio, a cable network, and digital platforms. Tribune Media Company is a publicly traded company.
32. **Tribune Publishing Company** is one of the country's leading media companies. The company's daily newspapers include the Chicago Tribune, New York Daily News, The Baltimore Sun, Sun Sentinel (South Florida), Orlando Sentinel, Hartford Courant, The Morning Call, the Virginian Pilot and Daily Press. Popular news and information websites, including www.chicagotribune.com, complement Tribune Publishing's publishing properties and extend the company's nationwide audience. Tribune Publishing Company is a publicly held corporation. Merrick Media, LLC, Merrick Venture Management, LLC and Michael W. Ferro, Jr., together own over 10% of Tribune Publishing Company's common stock. Nant Capital LLC, Dr. Patrick Soon-Shiong and California Capital Equity, LLC together own over 10% of Tribune Publishing Company's stock.
33. **Tribune Television New Orleans, Inc.** owns and operates television stations WGNO and WNOL-TV in New Orleans, Louisiana. Tribune Television New Orleans, Inc. is a wholly-owned subsidiary (through a parent entity) of Tribune Media Company, a public company.
34. **The Tully Center for Free Speech** began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications. The Tully Center for Free Speech is a subsidiary of Syracuse University.

Counsel for *Amici*:

1. Bruce D. Brown, Katie Townsend,* Caitlin Vogus,* and Lindsie Trego* of the Reporters Committee for Freedom of the Press.
2. Frank LoMonte* and Linda Norbut* of the Joseph L. Brechner Center for Freedom of Information.

*Of counsel

Additional Counsel for *Amici* (contact information provided in signature block):

1. Richard A. Bernstein of Advance Publications, Inc.

2. Kevin M. Goldberg of Fletcher, Heald & Hildreth, PLC for American Society of News Editors and Association of Alternative Newsmedia
3. Karen Kaiser of The Associated Press
4. David M. Giles of The E.W. Scripps Company
5. Barbara W. Wall of Gannett Co., Inc.
6. Polly Grunfeld Sack of GateHouse Media, LLC
7. Mary Ellen Roy (La. Bar #14388) of Phelps Dunbar LLP for Gray Media Group, Inc., Gray Television Group, Inc., Rushing Media LLC, and Tribune Television New Orleans, Inc.
8. Juan Cornejo of The McClatchy Company
9. Kurt Wimmer of Covington & Burling LLP for The Media Institute
10. Tonda F. Rush of National Newspaper Association
11. Charles D. Tobin of Ballard Spahr LLP for The National Press Club and The National Press Club Journalism Institute
12. Mickey H. Osterreicher of National Press Photographers Association
13. Barbara L. Camens of Barr & Camens for The News Guild – CWA
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16. Chris Moeser of TEGNA Inc.
17. Charles J. Sennet of Tribune Media Company
18. Karen H. Flax of Tribune Publishing Company

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are The Reporters Committee for Freedom of the Press, Brechner Center for Freedom of Information, Advance Publications, Inc., American Society of News Editors, The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia, The E.W. Scripps Company, Gannett Co., Inc., GateHouse Media, LLC, Gray Media Group, Inc., Gray Television Group, Inc., Hanna Media Inc., International Documentary Assn., Investigative Reporting Program, Investigative Reporting Workshop at American University, Louisiana Association of Broadcasters, The McClatchy Company, The Media Institute, National Freedom of Information Coalition, National Newspaper Association, The National Press Club, National Press Club Journalism Institute, National Press Photographers Association, The NewsGuild - CWA, POLITICO LLC, Public Affairs Research Council of Louisiana, Rushing Media LLC, Society of Professional Journalists, TEGNA Inc., Tribune Media Company, Tribune Publishing Company, Tribune Television New Orleans, Inc., and Tully Center for Free Speech.

As news media organizations, publishers, and organizations dedicated to protecting the First Amendment interests of journalists and authors, *amici* have a strong interest in this case. The Western Division of Louisiana District Court's

refusal to unseal the terms of a settlement agreement between a government agency and a minor in a case involving issues of significant public concern undermines the press's vital role in informing the public of developments in the federal courts, which is necessary to ensuring both the fairness of the judicial system and the public's trust in its fairness.

The Supreme Court has long recognized that the press acts as a surrogate for the public when it exercises its First Amendment right of access to judicial proceedings and that such access is necessary to the proper functioning of the judicial system. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (plurality opinion). Among other things, access to court records gives the news media the tools necessary for daily reporting about the justice system, and it allows journalists, writers, and documentarians to shed light on specific cases and how they are handled by courts. *Amici* have an interest in ensuring that courts properly interpret and apply the presumptive First Amendment right of access to records of settlements in civil cases, which facilitates the press's ability to fulfill its role in informing the public.

SOURCE OF AUTHORITY TO FILE

Amici have moved for leave to file this brief in the accompanying motion pursuant to Federal Rule of Appellate Procedure 29(a)(3).

RULE 29(A)(4)(E) STATEMENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* declare:

1. no party's counsel authored the brief in whole or in part;
2. no party or party's counsel contributed money intended to fund preparing or submitting the brief; and
3. no person, other than *amici*, their members or their counsel, contributed money intended to fund preparing or submitting the brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 573 (1980) (plurality opinion). For this reason, the public and the press enjoy two distinct rights of access to court records and proceedings, one under the First Amendment and the other under the common law. Both rights of access play a fundamental part in ensuring public confidence in the judicial system. The press plays a crucial role in facilitating the public monitoring of the judicial system as surrogates for the public writ large. For that reason, it is well settled that the public and the press have a right of access to court documents, generally, that arises from the public’s interest in observing the consideration and disposition of matters by courts, including settlements that bring cases to a close.¹

Public access, which is necessary to both the fairness of the judicial system and the public’s perception of its fairness, cannot be curtailed except where

¹ *Amici* agree with Media Intervenors that the district court erred when it did not take Louisiana’s Public Records Law into account when sealing the settlement agreement. *See* Br. of Movant-Appellants Argument Section IV (filed Jan. 30, 2019), Document No. 00514814999. Because this issue has been fully briefed by Media Intervenors, *amici* do not address this argument and instead focus on the rights of access under the First Amendment and the common law.

necessitated by compelling interests. When the First Amendment right of access applies, judicial closures may occur only if—and only to the extent that—“specific, on the record findings . . . demonstrate that ‘closure is essential to preserve higher values[.]’” *Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 13–14 (1986). Under the common law, the presumption of access may only be overcome when outweighed by “interests favoring nondisclosure.” *SEC v. Van Waeyenberghe*, 990 F.2d 845, 848 (5th Cir. 1993).

At issue in this case is whether a court order sealing a settlement between the Iberia Parish Sheriff’s Office and the minor child of an alleged victim of an unlawful officer-involved shooting violates the public’s rights of access. The terms of the settlement agreement were placed in the record under seal in the form of an audiotaped statement by counsel. ROA.1276. The settlement agreement, including the settlement amount, is subject to both the First Amendment and common law presumptions of access. In denying the motion by Capital City Press, doing business as *The Advocate*, and KATC Communications (“Media Intervenors”) to vacate a court order sealing the terms of the settlement agreement, the district court ignored the paramount public interest in access to the settlement agreement, including the precise settlement amount.

Public access to the settlement amount will promote the public's interest in monitoring the functioning of the courts, especially in a case of prominent local and national concern regarding allegations of a police-involved shooting. Furthermore, the public has a right to know how taxpayer dollars are being used to settle civil disputes involving the government. Contrary to the district court's assessment that the specific dollar amount of a settlement would promote sensationalism while exposing a minor to potential harassment, the public has a vital and legitimate interest in monitoring expenditures of taxpayer money and whether justice is ultimately being served, perhaps especially when the recipient of settlement funds is a minor.

For the reasons set forth herein, *amici* respectfully urge this Court to reverse the district court's order.

ARGUMENT

I. Public access is an essential feature of our judicial system.

- A. Openness enhances fairness and public trust in the courts and provides the public with an outlet for community concerns.

Openness has long been recognized as “an indispensable attribute” of our justice system. *Richmond Newspapers*, 448 U.S. at 569. It guards against unfairness and inequity in the application of laws, as the “sure knowledge that *anyone* is free to attend [judicial proceedings] gives assurances that established procedures are being followed and that deviations will become known.” *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 508 (1984) (“*Press-Enterprise I*”) (emphasis in original). As this Court has pointed out, access to judicial records “serves . . . to curb judicial abuses[.]” *Van Waeyenberghe*, 990 F.2d at 849 (quoting *Littlejohn v. Bic Corp.*, 851 F.2d 673, 682 (3d Cir. 1988)). Fairness is achieved by “permit[ting] the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government.” *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982).

In addition to promoting fair adjudications through public accountability, openness provides the public with the information it needs to remain confident in the justice system. Openness of the courts and access to judicial records “promote[s] trustworthiness of the judicial process, . . . and [] provide[s] the

public with a more complete understanding of the judicial system, including a better perception of its fairness.” *Van Waeynberghe*, 990 F.2d at 849 (quoting *Littlejohn*, 851 F.2d at 682). Thus, access not only “enhances . . . the basic fairness of” the courts, but also “the appearance of fairness so essential to public confidence in the system.” *Press-Enterprise I*, 464 U.S. at 508.

Additionally, openness of courts serves a “community therapeutic value.” *Press-Enterprise II*, 478 U.S. at 570. When a shocking event occurs within a community, “the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion.” *Id.* at 571; *see also Press Enterprise I*, 464 U.S. at 508–09. However, “no community catharsis can occur if justice is done in a corner [or] in any covert manner.” *Richmond Newspapers*, 448 U.S. at 571 (internal quotations omitted).

In short, in order for the judicial branch to function effectively in a system of democratic self-government, the people must be given an opportunity to observe its activities. Such observations—guaranteed by First Amendment and common law rights of access—provide the public the ability not only to ensure justice has not been miscarried, but also to gain trust that it will not be in the future.

B. The press plays an important role in facilitating public access to the courts.

The Supreme Court has recognized that the news media plays a vital role in facilitating this public monitoring of the judicial system: “A responsible press has always been regarded the handmaiden of effective judicial administration. . . . The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.” *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966). Thus, “[w]hile media representatives enjoy the same right of access as the public,” they often “function[] as surrogates for the public” by, for example, attending proceedings, reviewing court documents, and reporting on judicial matters to the public at large. *Richmond Newspapers*, 448 U.S. at 573. The press “guards against the miscarriage of justice[,]” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 587 (1976) (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966)), and “expos[es] corruption among public officers and employees.” *Estes v. Texas*, 381 U.S. 532, 539 (1965).

Obstructing the media’s ability to discharge this oversight function by restricting access to court proceedings and records deprives the citizenry of critical information about the functioning of the judicial system and government activity. News outlets serve as a watchdog against government attempts to mislead the

public and to perpetrate other abuses of power. When news organizations are denied access to judicial proceedings and records, it is the public that loses.

II. The settlement amount included in the settlement agreement is subject to both the First Amendment and common law presumptions of access.

The public enjoys two rights of access to judicial proceedings and judicial records, one under the First Amendment and the other under the common law, which “predates the Constitution itself.” *Belo Broad. Corp. v. Clark*, 654 F.2d 423, 429 (5th Cir. 1981) (quoting *United States v. Mitchell*, 551 F.2d 1252, 1260 (D.C. Cir. 1976)); *see also Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981) (citing *Richmond Newspapers*, 448 U.S. at 579) (“First Amendment guarantees are implicated when a court decides to restrict public scrutiny of judicial proceedings.”). *Amici* agree with Media Intervenors that the settlement agreement, including the settlement amount, in this case is subject to both the First Amendment and common law presumptions of access.

The First Amendment right of access applies when “the place and process have historically been open to the press and general public” and “public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise II*, 478 U.S. at 8. This right of access applies to judicial records as well as court proceedings. *See Courthouse News Service v. Planet*, 750 F.3d 776, 786 (9th Cir. 2014) (collecting cases from federal appellate

courts around the country applying the First Amendment right of access to civil court documents and proceedings); *see also Sullo & Bobbitt, PLLC v. Milner*, 765 F.3d 388, 393 (5th Cir. 2014) (finding that a district court did not err in applying the “experience and logic” test to judicial records and noting that every court to consider the issue has determined that the “experience and logic” test does apply to records). When the First Amendment right of access applies, it may be overcome only after “specific, on the record findings . . . demonstrat[e] that ‘closure is essential to preserve higher values[.]’” *Press-Enter. II*, 478 U.S. at 13–14 (quoting *Press Enterprise I*, 464 U.S. at 510).

The common law right of access provides the public a “right to inspect and copy judicial records.” *Van Waeyenberghe*, 990 F.2d at 848. “Although the common law right of access to judicial records is not absolute, ‘the district court’s discretion to seal the record of the judicial proceedings is to be exercised charily.’” *Id.* The common law presumption of access may only be overcome when outweighed by “interests favoring nondisclosure.” *Id.* Under the common law, a court considering sealing judicial records may only make such a determination after “consider[ing] ‘relevant facts and circumstances of the particular case[.]’” *Id.* (quoting *Belo Broad. Corp.*, 654 F.2d at 434).

The rights of access extend to settlements filed with the court, like the settlement in this case. This Court has previously held that a settlement agreement is subject to the common law right of access, stating that “[o]nce a settlement is filed in district court, it becomes a judicial record.” *Id.* at 849.² This is because “[o]nce a matter is brought before a court for resolution, it is no longer solely the parties’ case, but also the public’s case. Absent a showing of extraordinary circumstances . . . , the court file must remain accessible to the public.” *Brown v. Advantage Engineering*, 960 F.2d 1013, 1016 (11th Cir. 1992). In its decision, the district court anticipated such settlements would likely, at minimum, be subject to the common law right of access. ROA.1280.

² In *Van Waeyenberghe*, this Court noted that the common law right of access applies especially to settlements submitted to the court for approval. *Id.* In this case, the district court below found that the settlement agreement at issue was not submitted to the district court for approval. ROA.1288. However, *amici* note that this Court has previously found that “[i]n order to ensure that minor’s (sic) claims are carefully scrutinized, Louisiana courts and the Fifth Circuit have found the [Louisiana] statutory scheme to *compel* prior approval of a settlement or compromise of such claims.” *Carter v. Fenner*, 136 F.3d 1000, 1009 (5th Cir. 1998) (emphasis added); *see also* La. Code Civ. Proc. Ann. art. 4271 (requiring state court approval for settlements of claims by minors). If the settlement agreement was submitted to the state court for approval, as required by Louisiana law and this Court’s precedent, it is indisputably subject to the common law right of access. If the settlement agreement was *not* submitted for approval, that is all the more reason the public should have access to it, so that it may scrutinize the terms of the agreement in light of the apparent failure to comply with the requirement of court approval.

Because settlements involving public entities invoke the public’s ““process of self-governance”” by “undoubtedly involved in some measure the expenditure of public funds[,]” *Soc’y of Prof’l Journalists, Headliners Chapter v. Briggs*, 675 F. Supp. 1308, 1309 (D. Utah 1987), courts have concluded that such documents are “public documents” subject to the First Amendment right of access. *Id.* at 1309–10; *see also Jessup v. Luther*, 277 F.3d 926, 929–30 (7th Cir. 2002) (finding that where a settlement agreement is found in judicial files “the document is presumptively a public document”); *Hardy v. Kaszyki Sons*, 2017 WL 6805707, at *3 (S.D.N.Y. Nov. 21, 2017) (holding the weight of the common-law presumption of access to records related to a settlement agreement involving now-President Donald Trump was “strengthened” by the public interest in cases related to public officials); *Union Oil Co. v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000) (holding that “[p]eople who want secrecy should opt for arbitration” and “[w]hen they call on the courts, they must accept the openness that goes with subsidized dispute resolution by public (and publicly accountable) officials”).³

³ Like the common law right of access, the First Amendment right of access to settlement-related documents is more robust when a settlement has been submitted to the court for approval, as these settlements pertain to adjudication of public judges. *See In re Sept. 11 Litig.*, 723 F. Supp. 2d 526, 530–33 (S.D.N.Y. 2010) (applying the experience and logic test of the First Amendment right of access to

III. The district court erred by failing to weigh the significant public interest in access to the settlement agreement in this case.

Amici also agree with Media Intervenors that the district court erred in holding that the First Amendment and common law presumptions of access were overcome in this case. While the district court articulated some interests it said weighed in favor of restricting public access to the settlement amount in this case, it did not adequately take account of the public’s interest in access. ROA.1282–83. In discussing the public’s interest in this case, the district court only considered—and dismissed without full discussion—the involvement of government actors. ROA.1282–83. In addition, the district court concluded that public access to the settlement agreement would serve only to promote “a sensational story.” ROA.1296. The district court erred in failing to properly weigh the strong and legitimate public interest in access to the settlement amount.

A. Access to the settlement amount will allow the public to examine the functioning of the courts.

In denying the motion by Media Intervenors to vacate the court order sealing the terms of a settlement (which were memorialized on the record in the form of an

the aggregate settlement amount where “the information [bore] directly on [] adjudication of the settling parties’ motion for approval” of the agreement.)

audiotaped statement), the district court ignored the paramount public interest in this case, which continues even after settlement.

Public understanding of the justice system requires the public also understand how cases are disposed. *See generally Van Waeyenberghe*, 990 F.2d at 849 (holding that settlement agreements are judicial records); *Brown*, 960 F.2d 1015–16 (holding that sealing of settlement agreements requires “a showing of extraordinary circumstances”). This includes when cases are resolved through settlement agreements, even when those agreements do not require the court’s approval. This is part of “the public’s right to monitor the functioning of our courts,” *Matter of Cont’l Ill. Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984), even when the court’s function is to dismiss a case in light of a settlement that has been filed with the court or otherwise entered into the record.

B. Access to the settlement amount will shed light on the resolution of a lawsuit of significant local and national concern.

In Louisiana and nationwide, the underlying subject matter of this lawsuit, the shooting of Victor White, has received extensive press coverage. *See, e.g.*, Nathaniel Rich, *The Preacher and the Sheriff*, N.Y. Times (Feb. 8, 2017), <https://perma.cc/2D9T-BV87>; Wilbert L. Cooper, *Autopsy Contradicts the Police’s Account of Victor White III’s Shooting in the Back of a Cop Car*, Vice (Aug. 21, 2014), <https://perma.cc/Z5B7-USJ9>; Jonathan Capehart, *Victor White’s*

unbelievable 'Houdini handcuff' suicide, Wash. Post (Sept. 2, 2014), <https://perma.cc/VG3U-SKTV>. According to a Louisiana State Police press release, while White was in custody, handcuffed in the back of a police vehicle after receiving a pat-down, he “produced a handgun and fired one round striking himself in the back.” See Capehart, *supra*. White’s family challenged the official story, however, citing conflicting evidence in the coroner’s report and saying they did not believe White committed suicide. *Victor White Family Demands Feds Probe Handcuffed Suicide Claim*, NBC News (Sept. 1, 2014), <https://perma.cc/3VK7-NN7E>. After the Louisiana State Police and the FBI declined to prosecute the officers allegedly involved in the shooting, the family’s wrongful death lawsuit became an issue of public importance and central to the public’s ability to understand what happened when White died. See Rich, *supra*; see also David Lohr, *DA Won’t File Charges In Death Of Handcuffed Man Shot in Cop Car*, Huffington Post (Feb. 8, 2016), <https://perma.cc/VFW9-9P2Z>. Public access to the amount of the settlement will shed light on the resolution of a newsworthy case of particular concern to the community. Without such access, the public cannot have a fully informed discussion of the outcome of this case or experience the “community therapeutic value” that comes from knowing that justice has been achieved. See *Richmond Newspapers*, 448 U.S. at 570.

In addition to raising local concerns, this case has also sparked national interest because it involves allegations of a police-involved shooting, a topic that has been a matter of widespread national debate and is squarely a matter of public concern. Each year since 2015, police have shot and killed nearly 1,000 people, and in 2018 alone, police shot and killed 995 people. *Fatal Force*, Wash. Post (Jan. 3, 2019), <https://perma.cc/8ZE3-QN9Z>. News outlets routinely report on police-involved shootings and the public controversy and legal proceedings that often follow. *See, e.g.*, Elliott C. McLaughlin, *Woman streams aftermath of fatal officer-involved shooting*, CNN (July 8, 2016), <https://perma.cc/6JWT-P6AX> (discussing police officer's shooting of Philando Castile); Andrew Knapp and Brenda Rindge, *In heated testimony at ex-officer's sentencing, eyewitness again calls Walter Scott shooting 'abuse'*, Post and Courier (Dec. 4, 2017), <https://perma.cc/F9ZE-5W7T> (discussing trial of police officer who shot of Walter Scott); Elahe Izadi and Peter Holley, *Video shows Cleveland officer shooting 12-year-old Tamir Rice within seconds*, Wash. Post (Nov. 26, 2014), <https://perma.cc/2KYD-PYMX> (recounting video showing police officer shooting a 12-year-old wielding a BB gun); Annie Sweeney and Jason Meisner, *A moment-by-moment account of what the Laquan McDonald video shows*, Chi. Tribune (Nov. 25, 2015), <https://bit.ly/2SvO8ZR> (discussing video showing a Chicago

police officer shooting a knife-wielding teenager). Widespread press coverage of police shootings brings public attention to use of deadly force by law enforcement and has contributed to a national discussion of when such shootings and other types of force are justified. *See, e.g., Controversial killings by police*, CBS News, <https://perma.cc/BHK4-SPXH> (last visited Feb. 6, 2019) (chronicling many controversial police shootings that have sparked public inquiry since 2015); David French, *The Police Shooting Debate: Misleading Arguments Obscure Sobering Truths*, National Review (July 14, 2016), <https://perma.cc/K4Q4-2VR6>.

Contrary to the district court's assertion, press coverage of the settlement of this case is not "sensationalism," but commonplace though important journalism that informs the public about police actions and how the government responds to claims of police shootings. The public has a legitimate interest in examining how the courts handle civil cases related to police shootings and other uses of deadly force, including settlements of legal claims. For example, when police fatally shot a Mexican farmworker in southeastern Washington state 17 times, news coverage of the \$750,000 settlement agreement allowed the community to feel justice had been served, thereby helping to restore normalcy to community-police relations. *See* Tyrone Beason, *Family of a Mexican farmworker fatally shot by police in Pasco receives \$750,000 settlement*, Seattle Times (Dec. 20, 2018),

<https://perma.cc/6DLB-CB7W>. Coverage of settlements in other, similar cases has allowed the public to understand how these cases are resolved through the judicial process. *See, e.g.*, Timothy Williams and Mitch Smith, *\$16 Million vs. \$4: In Fatal Police Shootings, Payouts Vary Widely*, New York Times (June 28, 2018), <https://perma.cc/2YQW-MGRW> (discussing the variety of settlements that occur in cases related to police use of deadly force). In some cases, news stories about settlements of claims concerning police shootings promotes restoration of trust in law enforcement and reinforces public trust in the courts. *See, e.g.*, Ryan Levi, *Sonoma County to Pay \$3 Million Settlement in Andy Lopez Shooting*, KQED (Dec. 18, 2018), <https://perma.cc/7PJW-FAB4> (reporting on a settlement in a police-involved shooting case in Sonoma County, Calif., and quoting the Sonoma County Sheriff as explaining that the settlement will help “the community to start moving forward[.]”).

- C. Access to the settlement amount will allow the public to monitor the expenditure of public money.

The public also has a significant interest in understanding how taxpayer dollars are used to resolve legal claims against government entities, including the precise amount paid to settle a lawsuit. Taxpayer money spent on settlements is unavailable to meet other community needs. Whether similar cases result in comparable payments to injured parties also sheds light on the fairness of

settlement offers and the justice system. Finally, in cases in which minors or other vulnerable members of the community receive settlements, like the instant case, knowledge of the specific settlement amount allows the public to determine whether the settlement is fair.

Because of the strong public interest in the amounts of settlements paid by government, news organizations routinely publish stories about the amount of settlement agreements paid from the public fisc. *See e.g.*, Kevin Hanson, *Settlement reached in case against city, brought by victim of child rape*, Courier-Herald (May 3, 2018), <https://perma.cc/L6HC-2VNS> (reporting on a \$400,000 settlement reached in a case between the city of Enumclaw and a minor rape victim). Just last year, for example, *The New York Times* published a story in which it listed the settlement amounts paid by governments in high-profile police shootings around the country. *See Williams and Smith, supra*. The story examined disparities in settlement amounts paid to the victims of police shootings and their families, *id.*, and this kind of informative journalism would not have been possible if the settlement amounts were not publicly available.

The district court's conclusion that the settlement amount in this case would serve only as fodder for "a sensational story regarding the amount of money paid to resolve this lawsuit" is incorrect. Public reports of settlement amounts have

been key to many important and newsworthy stories. For instance, the amount of settlement payments made by the Catholic Church to resolve allegations of sexual abuse by priests against minors is currently an issue of legitimate public concern and intense public scrutiny. *See, e.g.*, Michael Barba, *Sex abuse cases cost SF Catholic Church \$87 million in settlements*, San Francisco Examiner (Nov. 27, 2018), <https://perma.cc/5Z4P-3VEF>; Kevin O'Connor, Alex Johnson, *Brooklyn diocese reaches record \$27.5M settlement with four victims of abuse by lay educator*, NBC News (Sept. 18, 2018), <https://perma.cc/K6MV-WVQ9>.

IV. A vague interest in protecting the privacy of minors does not outweigh the public's interest in access to court records of police shooting settlements.

Revelations about issues involving minors do not mechanically create a compelling interest that overrides the First Amendment or common law rights of access, as the district court erroneously concluded. ROA.1290–94. For example, in *Globe Newspapers*, the Supreme Court struck down a Massachusetts statute that automatically closed court proceedings during the testimony of minor victims of sexual offenses, concluding that whether the First Amendment presumption of access had been overcome must be determined on a case-by-case basis, with an eye toward specific concerns in each case. 457 U.S. at 608–09.

Here, the district court broadly stated that where a minor is involved in a settlement agreement, sealing the settlement amount is appropriate to protect the minor from potential scams or those who may wish them ill, given their new-found wealth. ROA.1290–91. However, this argument falls short in two ways: the district court (1) did not explain why here, specifically, the minor involved had a heightened interest in sealing of the settlement agreement that would make the district court’s analysis more than an automatic sealing because of minor involvement and (2) did not consider that settlement payments to minors are generally placed in an account for the minor’s future use or given to the minor as small installments, minimizing the possibility of predatory targeting.

- A. The district court did not identify why this case presented a particular need for privacy.

The district court relied on the notion that “[i]t is axiomatic that the protection of children is a laudable goal” in denying Media Intervenors’ motion to unseal. ROA.1290–94. It cited two district court cases within the Fifth Circuit for the proposition that when a minor’s privacy is at issue, the rights of access are overcome and a court file should be sealed. ROA.1291–93. However, by the district court’s own admission, the cited cases both dealt with protecting sensitive information about minors—such as information about “medical and emotional conditions” and a juvenile court record—not general facts about a lawsuit, such as

the amount of a settlement. ROA.1292–93; *see also Jaufre ex rel. Jaufre v. Taylor*, 351 F.Supp.2d 514, 517 (E.D. La. 2005); *BG, III v. Banks*, 2017 WL 318836, *3 (N.D. Miss. 2017).

Here, the settlement amount would not reveal any sensitive information about the minor plaintiff.⁴ Because a minor’s privacy does not automatically overcome the rights of access, the court must identify specific privacy interests at issue. *See generally Globe Newspapers*, 457 U.S. at 608–09. Other than the amount of the settlement, which is not a sensitive fact about the minor plaintiff, the district court did not identify any specific privacy interests at stake in this case. Therefore, the district court failed to make the “specific, on the record findings” required to overcome the First Amendment right of access, *Press-Enterprise II*, 478 U.S. at 13–14, and also neglected to “charily” exercise its discretion to seal a case under the common law right of access. *Van Waeyenberghe*, 990 F.2d at 848.

⁴ In addition, to the extent that the Court concludes that the settlement does contain sensitive information that overcomes the public right of access, that information should be redacted, rather than withholding the settlement wholesale. *Globe Newspapers*, 457 U.S. at 607 (stating that closure of court proceedings must be “narrowly tailored”).

B. The district court failed to consider how settlement payments are usually distributed to minors in Louisiana.

Generally, when a minor is the beneficiary of a sum of money stemming from a judgment or settlement, the funds are not given directly to the minor as a lump sum. *See* La. Code Civ. Proc. Ann. art. 4521 (describing the ways by which minors in Louisiana may be paid funds as the result of a settlement). Rather, settlement funds are placed in the registry of the court, invested in an interest-bearing investment, placed in a trust fund, or paid in installments. *Id.*; *see also Carter v. Fenner*, 136 F.3d 1000, 1009 (5th Cir. 1998) (applying Louisiana’s statutory scheme related to approval of settlements of claims by minors to a case in federal court); *Snider v. New Hampshire Insurance Co.*, 2017 WL 3271590, at *2 (E.D. La. 2017) (applying Louisiana’s statutory scheme related to settlement of claims by minors to a case in federal court). The only exception is when the child’s interests are represented by a “natural tutor”—that is, a sole legal custodian—and when settlements are of relatively low sums of less than \$10,000. *See* La. Stat. Ann. § 9:196; La. Civ. Code Ann. art. 250. “It is axiomatic under Louisiana law that a person compromising or settling the claim of a minor child shall follow certain explicit rules.” *Carter*, 136 F.3d at 1007. Accordingly, assuming the Louisiana statutes providing for the protection of minors due

settlement funds was followed in the underlying case, the funds would either be unavailable in full to the minor at this time or would total less than \$10,000.

In expressing concern that if the settlement amount is made public, the minor plaintiff in this case would be subject to “harassment” and predatory behavior, the district court did not consider the protections already in place to protect child beneficiaries of settlement agreements. Although the complete sealing of the settlement agreement makes it impossible to know for certain, under Louisiana law, it is unlikely that the plaintiff has access to the settlement funds, and if she does, they are of a relatively small quantity. Therefore, publication of the settlement amount, while providing the Louisiana public with an understanding of how courts handle cases such as these and how their tax funds are being utilized, will be unlikely to place the minor plaintiff at increased risk for predation.

CONCLUSION

For the foregoing reasons and those set forth in Media Intervenors' brief, *amici curiae* urge this Court to reverse the district court's denial of Media Intervenors' motion to unseal the settlement amount.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Bruce D. Brown, do hereby certify that the foregoing brief of *amici curiae*:

- 1) Complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4,924 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Local Rule 32.2, as calculated by the word-processing system used to prepare the brief; and
- 2) Complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Local Rule 32.1 and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-point, Times New Roman font.

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CERTIFICATE OF SERVICE

I, Bruce D. Brown, do hereby certify that I have filed the foregoing electronically with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system on February 6, 2019.

I certify that on this 6th day of February 2019, a copy of the foregoing has been served upon counsel for all parties to this proceeding as identified below through the court's electronic filing system as follows:

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