



37th Annual Media & the Law Seminar: CLE Materials

InterContinental KC, Kansas City, MO, May 8 and 9, 2025
(also available at <https://law.ku.edu/media-law-seminar>)

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Thursday Session:

Bankruptcy and the Fourth Estate: What Content Defenders Need to Know

Moderator

Carol LoCicero, Thomas & LoCicero, Tampa, FL

Panelists

Patricia Hamilton, Stevens & Brand LLP, Topeka, KS

Lynn Rzonca, Partner, Ballard Spahr, Philadelphia

Prof. Stephen Ware, KU Law School, Lawrence

Debts “for willful and malicious injury by the debtor to another entity” are exempt from discharge under the federal bankruptcy code. But defendants in high-profile defamation cases, such as Alex Jones and Casey Anthony, have sought discharge from civil judgments regardless on the theory that their expression did not amount to causing “willful and malicious injury.” What is the likelihood that media defendants can discharge judgments for privacy-related torts, and under what circumstances could such judgments become dischargeable?

CLE Materials

● ***Bankruptcy could affect your practice...*** Video Montage of High-Profile Cases Where Libel/Privacy/IP Defendants have filed bankruptcy (to be viewed during session only)

● **Amber Heard.** Heard filed for bankruptcy in the wake of the jury verdicts against her in connection with Johnny Depp’s defamation claims and then settled. See, e.g., THE GUARDIAN, *Amber Heard Declares Bankruptcy: Unable To Pay Johnny Depp*, July 28, 2022, retrieved from https://guardian.ng/life/amber-heard-declares-bankruptcy-unable-to-pay-johnny-depp/#google_vignette; see also NBC NEWS, *Amber Heard settles defamation case against Johnny Depp*, December 19, 2022 <https://www.nbcnews.com/news/us-news/amber-heard-settles-defamation-case-johnny-depp-rcna62376>

● **Alex Jones.** Seventeen months after filing for bankruptcy, Jones “has given up trying to reach a bankruptcy deal that would reduce the \$1.5 billion that he owes to the relatives of 20 students and six staff members killed in the mass shooting at Sandy Hook Elementary School in Newtown, Connecticut.” REUTERS, *Sandy Hook families agree to Alex Jones’ bankruptcy liquidation*, June 7, 2024, retrieved from <https://www.reuters.com/world/us/sandy-hook-families-agree-alex-jones-bankruptcy-liquidation-2024-06-07/>. More on Jones below.

● **The Gateway Pundit.** “Among those spreading [lies about the 2020 election] was the Gateway Pundit, which repeatedly bragged that it was the first to identify the two women

as the culprits in the alleged fraud.” MISSOURI INDEPENDENT, *Settlement reached in Gateway Pundit defamation case, though details were not disclosed*, October 10, 2024, retrieved from <https://missouriindependent.com/2024/10/10/settlement-reached-in-gateway-pundit-defamation-case-though-details-were-not-disclosed/>

- **Rudy Giuliani.** “Rudolph Giuliani’s bankruptcy bears striking similarities to that of right-wing conspiracy theorist Alex Jones, who recently learned that filing for bankruptcy won’t necessarily eliminate debts stemming from defamation rulings.” BLOOMBERG LAW, *Giuliani Joins Alex Jones in Defamation-to-Bankruptcy Pipeline*, December 22, 2023, retrieved from <https://news.bloomberglaw.com/bankruptcy-law/giuliani-joins-alex-jones-in-defamation-to-bankruptcy-pipeline> (\$). More on Giuliani below.

- **Cardi B.** A bankruptcy judge affirmed Cardi B can collect \$3.4M from YouTuber Tasha K after defamation verdict. BLOOMBERG LAW, *Alex Jones Loses, Cardi B Wins on Flip Sides of Bankruptcy Law*, October 20, 2023, retrieved from <https://news.bloomberglaw.com/bankruptcy-law/alex-jones-loses-cardi-b-wins-on-flip-sides-of-bankruptcy-law-1> (\$). More on Cardi B and Tasha K below.

- **Casey Anthony.** Anthony was able to avoid two defamation judgments after she filed for bankruptcy in 2013 because of findings the statements were not targeted to hurt plaintiff or were not made by Anthony. See CLICKORLANDO.COM, *Judge throws out defamation lawsuit against Casey Anthony*, September 18, 2015, retrieved from <https://www.clickorlando.com/news/2015/09/18/judge-throws-out-defamation-lawsuit-against-casey-anthony/>. More on Anthony below.

- **Gawker.** One of the first and highest profile media law and bankruptcy cases in recent memory, the case involved the Hulk Hogan sex tape verdict and privacy claims. The defendant there declared bankruptcy, was unable to discharge the judgment, and settled for tens of millions. NPR, *Gawker Files For Bankruptcy As It Faces \$140 Million Court Penalty*, June 10, 2016, retrieved from <https://www.npr.org/sections/thetwo-way/2016/06/10/481565188/gawker-files-for-bankruptcy-it-faces-140-million-court-penalty>; FORBES, *Hulk Hogan Settles \$140 Million Gawker Verdict For \$31 Million, IRS Collects Big*, November 3, 2016, retrieved from <https://www.forbes.com/sites/robertwood/2016/11/03/hulk-hogan-settles-140-million-gawker-verdict-for-31-million-irs-collects-big/>; VARIETY, *Hulk Hogan ‘Killing Gawker’ Film in Active Development With Matt Damon and Ben Affleck’s Artists Equity*, August 5, 2024, retrieved from <https://variety.com/2024/film/news/hulk-hogan-gawker-film-artists-equity-1236096091/>

- Ware, Stephen J., *An Overview of Bankruptcy and Debt Collection Law for Media and Defamation Lawyers*, February 27, 2025, retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5157810

- Under the **U.S. Bankruptcy Code**, “[a] discharge...[in a bankruptcy proceeding] does not discharge an individual debtor from any debt...for willful and malicious injury by the debtor to

another entity or to the property of another entity.” 11 U.S. Code § 523(a)(6)(emphasis added), retrieved from <https://www.law.cornell.edu/uscode/text/11/523>

- **Former New York City mayor Rudolph Giuliani** sought to discharge almost \$150 million in civil damages related to his liability in the defamation lawsuit brought by two Georgia poll workers, but the case was dismissed due to “uncooperative conduct.” See *In re Rudolph W. Giuliani*, No. 23-12055 (Bankr. S.D.N.Y. 2024), retrieved from https://www.nysb.uscourts.gov/sites/default/files/opinions/319064_289_opinion.pdf

- “Now that the case has been tossed out, Giuliani is no longer protected from creditors, including judgments, collection actions, foreclosures and repossessions, because of an automatic stay granted under federal bankruptcy law.” PBS NEWS, *A judge threw out Rudy Giuliani’s bankruptcy case. Here’s what that means*, July 13, 2024, retrieved from <https://www.pbs.org/newshour/politics/a-judge-threw-out-rudy-giulianis-bankruptcy-case-heres-what-that-means>

- In *Belcalis Marlenis Almanzar v. Latasha Transrina Kebe*, No. 23-14082 (Bankr. S.D. Florida 10/5/23), a jury verdict in a defamation case brought by **entertainer Cardi B** was not dischargeable. Retrieved from <https://docs.google.com/viewerng/viewer?url=https://thencbeat.com/wp-content/uploads/2023/10/Cardi-B-wins-bankruptcy-case-against-Tasha-K.pdf&hl=en>

- It was a cursory matter for the bankruptcy judge to rule that the defendant could not discharge a defamation judgment in bankruptcy. Donahue, B. BILLBOARD, *YouTube Who Defamed Cardi B Can’t Dodge Most of \$4M Judgment Via Bankruptcy*, October 9, 2023, retrieved from <https://www.billboard.com/business/legal/youtuber-defamed-cardi-b-must-pay-bankruptcy-1235437397/>

- But it took years for the plaintiff to secure a payment plan from the defendant. Dillon, N., ROLLING STONE, *Cardi B Scores \$1.2 Million Repayment Plan From Gossip Blogger Tasha K*, February 24, 2025, retrieved from <https://www.yahoo.com/news/cardi-b-scores-1-2-225058595.html>

- In *In re Jones*, 655 B.R. 884, No. 23-03035 (Bankr. S.D. Texas, October 19, 2023), **right-wing media personality Alex Jones** was unable to discharge the judgments against him for defamation, intentional infliction of emotional distress, and the Connecticut Unfair Trade Practices Act. Retrieved from https://www.govinfo.gov/content/pkg/USCOURTS-txsb-4_23-ap-03035/pdf/USCOURTS-txsb-4_23-ap-03035-0.pdf, p. 1-18.

- “Plaintiffs are parents of children murdered in the Sandy Hook Elementary School tragedy and a first responder. Before this bankruptcy case started, the Plaintiffs sued Alexander E. Jones and other defendants in a Connecticut state court. Three years into the litigation, the state court entered a default judgment against Jones based on repeated violations of discovery orders. The default judgment made Jones liable for the defamation and emotional distress claims....A jury awarded about \$1.4 billion in compensatory and punitive damages....” *In re Jones*, p. 1.

Issue

- “Plaintiffs started this adversary proceeding to determine the dischargeability of the debts against Jones under § 523(a)(6) of the Bankruptcy Code.” *Id.*, p. 5.

Rules

- “In *Kawaauhau v. Geiger*, the U.S. Supreme Court held that a willful and malicious injury means a “deliberate or intentional injury.” *Id.*, p. 7, citing 523 U.S. 57, 61 (1998).
- “This means that there must be intent to cause the injury, not just the act which leads to the injury.” *Id.*
- In the Fifth Circuit, intent to cause injury exists “where there is either an objective substantial certainty of harm or a subjective motive to cause harm.” *Id.* (internal citations omitted).
- The objective standard requires a court to analyze from a reasonable person’s perspective “whether the defendant’s actions were substantially certain to cause harm [and] are such that the court ought to infer that the debtor’s subjective intent was to inflict a willful and malicious injury on the plaintiff.” *Id.*
- “Because of this intent requirement, debts arising from reckless or negligently inflicted injuries are not excepted under § 523(a)(6).” *Id.*, p. 8, citing *Geiger*, 523 U.S. at 64.

Analysis

- “The jury’s finding of damages for defamation,” which was based on the actual malice standard, “independently supported the judgment, was binding, and precluded relitigating that issue in another case.” *Id.*, p. 14.
 - “Therefore, in Jones’s case, the language of the jury instruction confirms that the damages awarded flow from the allegation of intent to harm the Plaintiffs—not allegations of recklessness.” *Id.*
 - But the verdict against Jones for intentional infliction of emotional distress was based a jury instruction that Jones acted either “intentionally or recklessly with extreme and outrageous conduct.” *Id.*, p. 15. Thus, Plaintiffs were not entitled to summary judgment on their claim that all damages awarded for IIED were not dischargeable.
- **A defendant accused of murdering her child, Casey Anthony**, also faced a defamation claim that she would have been permitted to discharge in bankruptcy. *In re Anthony*, 538 B.R. 145, No. 13-0922 (Bankr. M.D. Florida 2015), retrieved from <https://case-law.vlex.com/vid/gonzalez-v-anthony-in-892437464> (\$))
- See also Musgrave, J. PALM BEACH POST, *Casey Anthony wins defamation case*, September 18, 2015, retrieved from <https://www.palmbeachpost.com/story/news/crime/2015/09/18/casey-anthony-wins-defamation-case/7485122007/>

- There, the plaintiff planned to sue Casey Anthony for a remark Anthony made to her parents implying that plaintiff was responsible for the disappearance of Anthony's child:

"And when they went and interviewed that girl down in Kissimmee, they never showed me a picture of her."

Issue/Rule

- But first, the plaintiff brought suit "to obtain a determination that her claim arises from a willful and malicious injury and is therefore excepted from discharge, by operation of 11 U.S.C. § 523(a)(6)." *In re Anthony* at 147.

Analysis/Conclusion

- "[T]he content and context of the Statement do not support Plaintiff's allegation that the Statement was uttered with the intent or purpose to injure her. The Statement was made only to the Debtor's parents. It was not a false statement about Plaintiff's person, character or conduct. The Statement was not targeted at Plaintiff. It was a statement, either false or mistaken, about the Orange County Sheriff's Office investigators failing to pursue Debtor's story about a babysitter with whom Debtor claimed to have last seen her daughter." *Id.* at 148.
- "During the same conversation with her parents, Debtor gave a description of the babysitter, as a person having a hyphenated last name (plaintiff), and physical features that did not match those of Plaintiff, whom she did not know. For these same reasons, the Statement is not malicious as to Plaintiff. The later public comments by Debtor's mother do not show an intent to injure Plaintiff and are not linked to any directive by Debtor to target or harm Plaintiff. Thus, there is no legal or factual basis to attribute the mother's statements to Debtor. Therefore, the Debtor is entitled to a discharge from Plaintiff's defamation claim." *Id.*

• **Litigating a Bankruptcy Debtor's Nonbankruptcy Claims, KBA Journal, Vol. 90, No. 5 (2021).** "Lawyers who do not regularly practice in bankruptcy court may find themselves representing clients in personal injury lawsuits, divorces or contract disputes before or after the clients have filed a chapter 7 or chapter 13 bankruptcy....This article aims to chart a path for nonbankruptcy practitioners to follow when they are asked to represent a bankruptcy debtor in a nonbankruptcy proceeding." Retrieved from <https://law-journals-books.vlex.com/vid/90-j-kan-bar-936866128> (\$)

- Employment of counsel – Do you just keep litigating on behalf of the debtor? Special & ordinary course counsel process.
 - Insolvency analyses are key.
 - Add bankruptcy checks to the conflict check process for new clients. Why?
 - Litigators don't often think about what they need in their judgment so that if the defendant files for bankruptcy, it will make it easier to get a non-dischargeable judgment against them. What should you include?
 - How does bankruptcy change the dynamics of a First Amendment-related case you're working on?

Panel 1:
The Law vs. Disinformation

Moderator

Laura Handman, Davis Wright Tremaine, Washington, D.C.

Panelists

Bob Corn-Revere, FIRE, Washington, D.C.

Matthew Leish, Klaris Law, New York City

Under the First Amendment, content-based regulations are presumptively unconstitutional, rendering the regulation of expressly defined expression such as “disinformation” a challenging prospect. Meanwhile, according to the *New York Times*, studies show that “warning labels and digital literacy training improved the ability of participants to judge true or false headlines by only about 5 to 10 percent.” With social guideposts ignored, what legal solutions are available to regulate expression that implicates the public good?

CLE Materials

- NEW YORK TIMES, *Even Disinformation Experts Don't Know How to Stop It*, July 11, 2024, summary retrieved from <https://www.bespacific.com/even-disinformation-experts-dont-know-how-to-stop-it/>; full article here <https://www.nytimes.com/2024/07/11/technology/disinformation-tools.html> (\$)
- THE WRAP, *Complaints of Bias, 'News Distortion' Against CBS, ABC and NBC Reinstated by Trump-Appointed FCC Chair*, January 22, 2025, retrieved from <https://www.thewrap.com/fcc-complaint-news-bias-cbs-abc-nbc-trump-reinstated/>
 - MSN, *CBS Asks FCC to Dismiss 'News Distortion' Complaint Over '60 Minutes' Harris Interview as 'Blatant Interference With Free Speech'*, March 7, 2025, retrieved from <https://www.msn.com/en-us/tv/news/cbs-asks-fcc-to-dismiss-news-distortion-complaint-over-60-minutes-harris-interview-as-blatant-interference-with-free-speech/ar-AA1ACFP2?ocid=ARWLCHR>
 - Foundation for Individual Rights and Expression, *FIRE comment to FCC calls for review of regulations that may violate the First Amendment*, March 7, 2025, retrieved from <https://www.thefire.org/news/fire-comment-fcc-calls-review-regulations-may-violate-first-amendment>
- *Trump v. Selzer*, 4:24-cv-00449 (S.D. Iowa), docket retrieved from <https://www.courtlistener.com/docket/69476247/trump-v-selzer/>
 - Trump’s lawsuit against longtime political pollster Ann Selzer was filed on December 16, 2024, alleging that Selzer’s polling showing Trump losing in Iowa was a deceptive act in violation of consumer protection laws. On January 7, 2025, the Foundation for

Individual Rights and Expression (FIRE) issued a press release saying that it would represent Selzer, writing “It is hard to imagine a legal claim that violates basic First Amendment principles more thoroughly than does President-elect Donald Trump’s lawsuit.” On February 21, FIRE filed motion to dismiss, arguing “allegations about polls and news stories [the plaintiffs] dislike have nothing to do with fraud” and that Selzer’s polling was protected expression under the First Amendment.

- Volokh, E. *Trump v. Selzer Likely Going Nowhere*, December 18, 2024, retrieved from <https://reason.com/volokh/2024/12/18/trump-v-selzer-likely-going-nowhere/>
- Complaint, retrieved from <https://storage.courtlistener.com/recap/gov.uscourts.iasd.89411/gov.uscourts.iasd.89411.1.1.pdf>
- Motion to Dismiss, retrieved from <https://www.thefire.org/research-learn/trump-v-selzer-motion-and-brief-support-motion-dismiss>
 - “From 1791 to the present, . . . the First Amendment has permitted restrictions upon the content of speech in a few limited areas, and has never include[d] a freedom to disregard these traditional limitations.”
 - “Here, Plaintiffs seek to create a new First Amendment exception for speech that has always received the highest level of constitutional protection — political speech and commentary. In a word, it just doesn’t fit.”
- *Murthy v. Missouri* (originally filed as *Missouri v. Biden*), U.S. Supreme Court No. 23-411, 83 F. 4th 350 (2024), retrieved from https://www.law.cornell.edu/supremecourt/text/23-411_2024-06-26
 - The case originated in May 2022, when “the attorneys general of Missouri and Louisiana, along with a number of private plaintiffs, filed a lawsuit in the U.S. District Court for the Western District of Louisiana alleging that federal government officials violated the First Amendment by ‘coercing’ or ‘significantly encouraging’ social media companies to remove or demote content from their platforms.” *Court Case Tracker: Murthy v. Missouri*, Brennan Center for Justice, retrieved from <https://www.brennancenter.org/our-work/court-cases/murthy-v-missouri-formerly-missouri-v-biden>
 - SCOTUS ruled that the plaintiffs had insufficient standing, finding that courts had traditionally refused to address injuries that result “from the independent action of some third party not before the court.”
 - “Because the majority decision focused chiefly on the issue of legal standing and because social media is so pervasive, the Court is likely to face similar issues in the future.” Free Speech Center, *Murthy v. Missouri* (2024), June 26, 2024, retrieved from <https://firstamendment.mtsu.edu/article/murthy-v-missouri-2024/#:~:text=Supreme%20Court%3A%20Parties%20failed%20to,an%20adequate%20case%20or%20controversy.>

- Brief for Petitioners, *Murthy v. Missouri* (originally filed as *Missouri v. Biden*), U.S. Supreme Court No. 23-411, Dec. 19, 2023 retrieved from https://www.supremecourt.gov/DocketPDF/23/23-411/293780/20231219192259919_23-411ts%20Murthy.pdf
- Amicus Brief, Knight First Amendment Institute in support of neither party, *Murthy v. Missouri* (originally filed as *Missouri v. Biden*), U.S. Supreme Court No. 23-411, Dec. 22, 2023, retrieved from https://www.supremecourt.gov/DocketPDF/23/23-411/294120/20231222121422782_KFAI%20amicus%20brief%20in%20Murthy%20v.%20Missouri.pdf
- Brief of Respondents, *Murthy v. Missouri* (originally filed as *Missouri v. Biden*), U.S. Supreme Court No. 23-411, Feb. 2, 2024, retrieved from https://www.supremecourt.gov/DocketPDF/23/23-411/299644/20240202144405984_2024-02-02%20-%20Murthy%20v.%20Missouri%20-%20Brief%20of%20Respondents%20-%20Final%20with%20Tables.pdf
- Amicus Brief, Foundation for Individual Rights and Expression, *Murthy v. Missouri* (originally filed as *Missouri v. Biden*), U.S. Supreme Court No. 23-411, Feb. 9, 2024, retrieved from https://www.supremecourt.gov/DocketPDF/23/23-373/289267/20231109143649711_23-373_Amicus%20Brief.pdf
- *National Rifle Association v. Vullo*, U.S. Supreme Court No. 22-842, 49 F. 4th 700 (2024), retrieved from <https://www.law.cornell.edu/supremecourt/text/22-842>
 - Petitioner and amici argued that the “New York state regulator’s attempts to blacklist a nonprofit advocacy group and deny it access to financial services because of its controversial viewpoint” violates the First Amendment. *Court Cases: National Rifle Association v. Vullo*, American Civil Liberties Union, retrieved from <https://www.aclu.org/cases/national-rifle-association-v-vullo>
 - “The court unanimously ruled that the National Rifle Association (NRA) stated a plausible First Amendment claim when it alleged that Mario Vullo, the superintendent of the New York Department of Financial Services, pressured insurance companies and executives to cease dealing with the NRA or face governmental scrutiny.” Free Speech Center, *National Rifle Association (NRA) v. Vullo* (2024), retrieved from <https://firstamendment.mtsu.edu/article/national-rifle-association-v-vullo/>
 - Brief in Opposition, *National Rifle Association v. Vullo*, U.S. Supreme Court No. 22-842, June 23, 2023, retrieved from https://www.supremecourt.gov/DocketPDF/22/22-842/269717/20230623154635287_22-842%20Brief%20in%20Opposition%20Final.pdf
 - Brief for Petitioners, *National Rifle Association v. Vullo*, Case No. 22-842, Jan. 9, 2024, retrieved from 22-842 <https://www.supremecourt.gov/DocketPDF/22/22->

[842/295309/20240109155536456_22-842%20NRA%20v%20Vullo%20Brief%20for%20Petitioner%20NRA.pdf](https://www.supremecourt.gov/DocketPDF/22/22-842/295309/20240109155536456_22-842%20NRA%20v%20Vullo%20Brief%20for%20Petitioner%20NRA.pdf)

- Amicus Brief in Support of Petitioner and Reversal, Foundation for Individual Freedom and Expression, *National Rifle Association v. Vullo*, No. 22-842, Jan. 16, 2024, retrieved from https://www.supremecourt.gov/DocketPDF/22/22-842/295795/20240116135218488_22-842_Amicus%20Brief.pdf

Panel 2:

Legislating the Search for Truth

Moderator

Jane Kirtley
Professor, University of Minnesota

Panelists

Erik Bierbauer
Senior Vice President, Litigation
NBCUniversal Media, LLC

Olivier Sylvain
Professor, Fordham Law School

Christine N. Walz
Holland & Knight LLP

Digital technology creates more opportunities for expression than ever before. Regulating this deluge of expression in a manner consistent with the First Amendment generally allows the government to punish digital communications that amount to “true threats” or otherwise indicate an intent to cause harm, such as sharing intimate images against the will of the person depicted. At the same time, the First Amendment has proven to be a substantial barrier to regulating expression the state finds merely deleterious, such as “deepfakes” commenting on matters of public concern. Under what circumstances does the government go too far in its attempts to legislate the truth?

CLE Materials

- New Jersey Assembly, No. 3540 (“Establishes criminal penalties for production or dissemination of deceptive audio or visual media, commonly known as ‘deepfakes.’”), adopted May 20, 2024, retrieved from <https://legiscan.com/NJ/text/A3540/2024>
- ASSOCIATED PRESS, *Creating and sharing deceptive AI-generated media is now a crime in New Jersey*, April 3, 2025, retrieved from <https://apnews.com/article/new-jersey-deepfake-videos-criminal-civil-penalties-276ca23b00b10a7ee7e7303ead8b4260>
- 2024 U.S. Senate Bill 4569, Take It Down Act (“To require covered platforms to remove nonconsensual intimate visual depictions”), retrieved from <https://www.congress.gov/bill/118th-congress/senate-bill/4569/text>
- “The bill makes it unlawful for a person to knowingly publish or threaten to publish NCII [non-consensual intimate imagery] on social media and other online platforms. NCII is defined to include realistic, computer-generated pornographic images and videos

that depict identifiable, real people.” Cruz, T. and Klobuchar, A, et al, “Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Network,” June 18, 2024, retrieved from https://www.young.senate.gov/wp-content/uploads/1-pager_TAKE-IT-DOWN-Act_6.18.2024-FINAL.pdf

- U.S. Senate Committee on Commerce, Science and Transportation, *Sens. Cruz, Klobuchar, Reps. Salazar, Dean Continue Fight to Pass TAKE IT DOWN Act*, January 16, 2025, retrieved from <https://www.commerce.senate.gov/2025/1/sens-cruz-klobuchar-reps-salazar-dean-continue-fight-to-pass-take-it-down-act>
 - “[Congress] must provide victims of online abuse with the legal protections they need when intimate images are shared without their consent, especially now that deepfakes are creating horrifying new opportunities for abuse.”
 - “As AI becomes more ubiquitous in our lives, it is essential that [Congress] safeguard[s] survivors of explicit deepfakes and non-consensual intimate imagery (NCII) that often devastate girls and women.”
- The bill seems likely to pass this year. But even if it does, “a larger question looms: Can it be enforced? By whom?” TECH POLICY PRESS, *The TAKE IT DOWN Act Is Poised To Become Law. But Will It Provide Justice To Victims?* April 15, 2025, retrieved from <https://www.techpolicy.press/the-take-it-down-act-is-poised-to-become-law-but-will-it-provide-justice-to-victims/>
- FTC, *FTC Proposes New Protections to Combat AI Impersonation of Individuals*, February 15, 2024, retrieved from <https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-proposes-new-protections-combat-ai-impersonation-individuals>
- Christopher Kohls, a self-proclaimed conservative content creator, faced a lawsuit for posting political commentary brought by the state of California. *Kohls v. Bonta*, No. 2:24-cv-02527 (E.D. Cal. 2024), retrieved from <https://cases.justia.com/federal/district-courts/california/caedce/2:2024cv02527/453046/14/0.pdf?ts=1727939818>
 - Kohls was granted an injunction staying that lawsuit because the allegedly wrongful expression (i.e., plaintiff’s politically-charged deepfakes) “doesn’t fall within the existing defamation exception to First Amendment protection, and isn’t subject to any other doctrine that categorically lowers protection for false statements in election campaigns.” Volokh, E. *Judge Blocks California Law Restricting “Materially Deceptive” Election-Related Deepfakes*, October 2, 2024, retrieved from <https://reason.com/volokh/2024/10/02/judge-blocks-california-law-restricting-materially-deceptive-election-related-deepfakes/>
- *Kohls v. Ellison*, No. 24-cv-3752, Order Denying Plaintiffs’ Motion for a Preliminary Injunction, January 10, 2025 (“From the record presented by Plaintiffs, it appears that Kohls has only ever posted constitutional parody” but lacked standing to bring “this pre-enforcement

challenge”), retrieved from <https://hlli.org/wp-content/uploads/2024/09/KohlsMN.45.Order-denying-PI.pdf>

- See also REUTERS, *Judge rebukes Minnesota over AI errors in ‘deepfakes’ lawsuit*, January 13, 2025, retrieved from <https://www.reuters.com/legal/government/judge-rebukes-minnesota-over-ai-errors-deepfakes-lawsuit-2025-01-13/>
 - “[O]ne of Minnesota’s experts in the case, Jeff Hancock, a misinformation specialist and a Stanford University communication professor, used fake article citations generated by AI to support the state’s arguments, the court found.”
 - Hancock told the judge that ChatGPT-4 likely “‘hallucinated’ two citations he made in his filing, and apologized for the oversight.”
 - The judge “said she does not believe Hancock intentionally cited fake sources generated by AI,” but the admission “shatters his credibility with this court.” See *Kohls v. Ellison*, Order Granting in Part and Denying in Part Plaintiff’s Motion to Exclude Expert Testimony, p. 10, January 10, 2025, retrieved from <https://fingfx.thomsonreuters.com/gfx/legaldocs/lgpdjbknkjp0/Kohls%20v.%20Ellison%20-%20Provinzino%20order.pdf>
- Commissioners, Federal Election Commission, *Letter to the Commission RE Artificial Intelligence in Campaign Ads—Draft Interpretive Rule*, September 19, 2024 (see appendix)
- Letter from FCC Chairman Brendan Carr to Alphabet, Apple, Meta and Microsoft, November 13, 2024 (seeking information about their use of Newsguard, the Steve Brill-founded company that rates the credibility of news outlets) (see appendix).
- Bierbauer, E. News Distortion slides (see appendix)

Panel 3:
Trump 2.0 and the Press

Moderator

Lee Levine, retired partner, Ballard Spahr, Washington, DC

Panelists

David Barlow, General Counsel, The Intercept, NYC

Dale Cohen, Documentary and Film Law Clinic, UCLA/Special counsel for Frontline, L.A.

Dana McElroy, Partner, Thomas & LoCicero, Ft. Lauderdale, FL

On the campaign trail in 2015, Trump said of reporters, “I would never kill them but I do hate them. And some of them are such lying, disgusting people.” Trump’s re-election in 2024 signals a renewed assault on the media through means including meritless litigation, elimination of funding, restrictions of access to people and places, executive orders, and more. The panel discusses how media lawyers should prepare to guide their clients through the uncharted waters that lie ahead.

CLE Materials

• *Perkins Coie LLP v. U.S. Department of Justice*, District Court, District of Columbia No. 1:25-cv-00716; *Jenner & Block LLP v. U.S. Department of Justice*, District Court, District of Columbia, No. 25-cv-00916; *Wilmer Cutler Pickering Hale and Dorr LLP v. Executive Office of the President*, District Court, District of Columbia, 25-cv-00917

- See, e.g., Trump, D. *Executive Order Addressing Risks from Jenner & Block*, March 25, 2025, retrieved from <https://www.whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-jenner-block/>
 - “Jenner engages in obvious partisan representations to achieve political ends, supports attacks against women and children based on a refusal to accept the biological reality of sex, and backs the obstruction of efforts to prevent illegal aliens from committing horrific crimes and trafficking deadly drugs within our borders.”
- AXIOS, *Mueller report prosecutor's law firm targeted in new Trump executive order*, March 25, 2025, retrieved from <https://www.axios.com/2025/03/25/trump-executive-order-jenner-block-law-firm-security>
 - “Trump is again retaliating against law firms he views as political opponents, this time targeting a lawyer who was involved with ex-special counsel Robert Mueller's investigation into Trump's first election.”
- REUTERS, *Judges block Trump orders targeting two law firms as Skadden cuts deal*, March 28, 2025, retrieved from <https://www.reuters.com/legal/jenner-block-sues-us-government-following-trump-executive-order-2025-03-28/>
 - “Calling parts of Trump’s order targeting Jenner & Block reprehensible and disturbing, Washington-based U.S. District Judge John Bates blocked portions of

it that sought to cancel federal contracts held by the firm's clients and to restrict its access by its lawyers to federal buildings and officials.”

- Order Granting Temporary Restraining Order, March 28, 2025, retrieved from <https://clearinghouse.net/doc/157792/>
- *Amicus Brief on Behalf of Sixty Media Organizations and Press Freedom Advocates in Support of Plaintiff's Motion for Summary Judgment*, April 11, 2025 (see appendix for copy of amicus brief filed in *Jenner & Block*; substantially similar amici brief was filed in *Wilmer Hale* and *Perkins Coie*.)
 - “This amici curiae brief represents the view of sixty media organizations and press freedom advocates....Although each signatory’s vantage point may be different, amici are united by their understanding that the zealous advocacy of counsel is vital to the press’s ability to inform the public and hold the government to account.” P. 3.
 - “The President seeks the simultaneous power to wield the legal system against those who oppose his policies or reveal his administration’s unlawful or unethical acts—who, in many cases, have been members of the press—and then deny them access to the system built to defend their rights. The President could thus “permit one side to have a monopoly in expressing its views,” which is the “antithesis of constitutional guarantees.” P. 1.
 - “[T]he press and their lawyers often take the lead in ensuring the public preserves its common law and First Amendment rights to access the facilities of the government. Lawyers representing the press will work directly with courts to ensure meaningful public access to court proceedings and records....Such processes functionally require counsel.” P. 6.
- Memorandum Order, April 8, 2025, *Associated Press v. Budowich*, District Court, District of Columbia, Case No. 25-cv-00532, retrieved from <https://deadline.com/wp-content/uploads/2025/04/trump-ap.pdf>
 - “The Court simply holds that under the First Amendment, if the Government opens its doors to some journalists — be it to the Oval Office, the East Room, or elsewhere — it cannot then shut those doors to other journalists because of their viewpoints. The Constitution requires no less.” P. 1-2.
- ASSOCIATED PRESS, *White House bars AP reporter from Oval Office because of AP style policy on ‘Gulf of America’*, February 12, 2025, retrieved from <https://apnews.com/article/trump-ap-journalism-first-amendment-8a83d8b506053249598e807f8e91e1ae>
- ASSOCIATED PRESS, *Despite a court order, White House bars AP from Oval Office event*, April 14, 2025, retrieved from <https://apnews.com/article/trump-ap-press-freedom-court-gulf-caffd32aa8ec6b04a50b8c5277d7c9cb>
- Letter from FCC Chair Brendan Carr to NPR and PBS, January 29, 2025, retrieved from http://cdn.arstechnica.net/wp-content/uploads/2025/01/fcc_carr_letter_to_npr_pbs.pdf

- Carr alleges “it is possible that NPR and PBS member stations are broadcasting underwriting announcements that cross the line into prohibited commercial advertisements.”
- NPR, *Trump’s FCC chief opens investigation into NPR and PBS*, January 30, 2025, retrieved from <https://www.npr.org/2025/01/30/nx-s1-5281162/fcc-npr-pbs-investigation>
- Letter from Sens. Markey, Lujan, and Peters to FCC, February 12, 2025, retrieved from https://www.markey.senate.gov/imo/media/doc/letter_to_fcc_on_broadcasters.pdf
 - “We write to express our serious concern about the recent actions taken by the Federal Communications Commission (FCC) under Chairman Carr to open or reopen investigations into broadcasting companies without any evidence of wrongdoing in what appears to be an attempt to intimidate broadcasters for political purposes.”
- Trump, D. *The NPR, PBS Grift Has Ripped Us Off for Too Long*, April 14, 2025, retrieved from <https://www.whitehouse.gov/articles/2025/04/the-npr-pbs-grift-has-ripped-us-off-for-too-long/>
- NPR, *Trump plans order to cut funding for NPR and PBS*, April 15, 2025, retrieved from <https://www.npr.org/2025/04/15/nx-s1-5352827/npr-pbs-public-media-trump-rescission-funding>
- *Digital Security Measures for Reporters to Mitigate Harassment* (see appendix)
- Press Freedom Defense Fund, *Statement of Work* (see appendix)
- Guidance on Travel Security (see appendix)
- POYNTER, *What the attempted dismantling of Voice of America means for press freedom in the US and the world*, March 25, 2025, retrieved from <https://www.poynter.org/commentary/analysis/2025/voice-america-trump-news-channel-liam-scott/>

Panel 4:
Reporting the News of Tomorrow

Moderator

Jennifer Dukarski, Butzel Long, Ann Arbor, MI

Panelists

Adi Kamdar, Morrison Foerster, Washington, D.C.

Ayan Mittra, *Texas Tribune*

Amy Kristin Sanders, John & Ann Curley Chair in First Amendment, Penn State U.

AI is both blessing and curse, as such technology furthers possibilities in all walks of life while also raising a host of existential questions for humanity. But professional responsibilities for those with express or implied duties to the public, such as journalists and lawyers, remain the touchstone for determining when use of AI crosses the line.

CLE Materials

- Lewis, Seth, Sanders, Amy Kristin, and Carmody, Casey, *Libel by Algorithm? Automated Journalism and the Threat of Legal Liability*, March 12, 2018, abstract retrieved from <https://journals.sagepub.com/doi/abs/10.1177/1077699018755983>
- Tenzer, Leslie Y. Garfield, *Defamation in the Age of Artificial Intelligence*, August 18, 2023, retrieved from https://annualsurveyofamericanlaw.org/wp-content/uploads/2024/09/02_NYS_80_2_Tenzer.pdf
- COLUMBIA JOURNALISM REVIEW, *Artificial Intelligence in the News: How AI Retools, Rationalizes, and Reshapes Journalism and the Public Arena*, February 6, 2024, retrieved from https://www.cjr.org/tow_center_reports/artificial-intelligence-in-the-news.php
- ROCKET MINER, *After getting caught fabricating quotes, Cody reporter resigns*, August 8, 2024, retrieved from https://www.wyomingnews.com/rocketminer/news/state/after-getting-caught-fabricating-quotescody-reporter-resigns/article_0e48cb00-55c4-11ef-8122-a7769170a64e.html
- “Basically, what AI is really good at is, it’s good at creating plausible bulls—.”
- *Walters v. OpenAI*, No. 23-A-04860-2 (Ga. Super. Ct., Gwinnett Cnty.), complaint filed June 5, 2023, retrieved from <https://www.courthousenews.com/wp-content/uploads/2023/06/walters-openai-complaint-gwinnett-county.pdf>
- There, “Mark Walters, host of Armed America Radio, claimed in his lawsuit that ChatGPT produced the text of a made-up legal complaint accusing him of embezzling money from the Second Amendment Foundation. Walters said he has never been accused

of embezzlement or worked for the group.” Poritz, I. *OpenAI Fails to Escape First Defamation Suit From Radio Host*, Bloomberglaw.com, January 16, 2024, retrieved from <https://news.bloomberglaw.com/ip-law/openai-fails-to-escape-first-defamation-suit-from-radio-host>

- See also Spangler, T. *Radio Host Sues OpenAI for Defamation, Alleging ChatGPT Chatbot Invented False Legal Accusations About Him*, Variety, Jun. 8, 2023, retrieved from <https://variety.com/2023/digital/news/openai-chatgpt-defamation-lawsuit-radio-host-1235637166/>
- Defendant’s Motion to Dismiss Amended Complaint, Nov. 1, 2023, retrieved from <https://reason.com/wp-content/uploads/2024/01/WaltersvOpenAISTateMTD.pdf>
- Plaintiff’s Opposition to Defendant’s Third Motion to Dismiss, Nov. 30, 2023, retrieved from <https://reason.com/wp-content/uploads/2024/01/WaltersvOpenAISTateMTDResponse.pdf>
- Order Denying Motion to Dismiss, Jan. 11, 2024
 - Maher, J. *OpenAI Must Face Defamation Suit From Ga. Radio Host*, Law360, Jan. 12, 2024, retrieved from <https://www.law360.com/pulse/articles/1785594/openai-must-face-defamation-suit-from-ga-radio-host>
- Defendant’s Memorandum in Support of its Motion for Summary Judgment, November 14, 2024, retrieved from <https://medialaw.org/wp-content/uploads/2024/11/Opening-Brief-ISO-MSJ.pdf>
 - Defendant argued that it should not be liable for claims that depend on proving that AI outputs are provably false because “[g]iven the nature of ChatGPT—which provides automated responses in real time—human review of all outputs for accuracy before they are displayed to users is not even feasible.” MSJ, p. 23.
 - Defendant further argues plaintiff can’t prove an actual malice because “there is no evidence that anyone at OpenAI was even aware of ChatGPT’s mistake, let alone knew or recklessly disregarded whether it was wrong.” MSJ, p. 12.
- Brief of Amicus Curiae Technology Law and Policy Clinic at New York University School of Law in Support of Neither Party, December 12, 2024, retrieved from <https://firstamendment.law.uga.edu/wp-content/uploads/2024/12/Walters-v-OpenAI-Amicus-Brief-e-filed.pdf>
 - Amici argued the court should “conduct a fact-specific inquiry to adapt the law to this new and increasingly widespread technology.” *Walters v. Open AI Explainer*,

retrieved from <https://knowingmachines.org/knowing-legal-machines/legal-explainer/cases/walters-v-openai>

- Plaintiff's Response to Motion for Summary Judgment, January 6, 2025, retrieved from <https://www.law360.com/pulse/articles/2280064/attachments/0>
 - "Reckless disregard requires proof that the defendant was aware of the likelihood that he was circulating false information. It is hard to imagine a case where the defendant showed more awareness that it was circulating false information than the present case....At all times that ChatGPT has been available to the public, OAI has included multiple warnings directly to ChatGPT users regarding the possibility that ChatGPT may generate factually inaccurate output....And OAI's CEO has stated publicly, 'I probably trust the answers that come out of ChatGPT the least of anybody on Earth.'" Response, p. 13.
- Oral arguments on motion for summary judgment took place on April 14, 2025

Panel 5:

Anti-Disinformation Toolkit: Pros and Cons of Fact-Checking

Moderator

Max Mishkin, Ballard Spahr, Washington, D.C.

Panelists

Alex Abdo, Knight First Amendment Institute, New York City

Laura Edelson, Northeastern U., Boston

A mix of legislative bodies and organizations have taken up the cause of online fact-checking and fighting disinformation in the name of democracy. Meanwhile, creative minds are working on IT platforms to address disinformation, smoke out “deepfakes”, and help the public discern fact from fiction, including using AI to fight AI.

CLE Materials

- REAL Political Advertisements Act, 2023 United States Senate Bill 1596, retrieved from <https://www.congress.gov/118/bills/s1596/BILLS-118s1596is.pdf>
 - *Klobuchar, Booker, Bennet Introduce Legislation to Regulate AI-Generated Content in Political Ads*, May 15, 2023 (“This legislation would require a disclaimer on political ads that use images or video generated by artificial intelligence.”), retrieved from <https://www.klobuchar.senate.gov/public/index.cfm/2023/5/klobuchar-booker-bennet-introduce-legislation-to-regulate-ai-generated-content-in-political-ads>
- Platform Accountability and Transparency Act, 117th Congress, retrieved from https://www.coons.senate.gov/imo/media/doc/bill_text_pata_act.pdf
 - *Senator Coons, colleagues introduce legislation to increase transparency around social media platforms*, June 8, 2023, retrieved from <https://www.coons.senate.gov/news/press-releases/senator-coons-colleagues-introduce-legislation-to-increase-transparency-around-social-media-platforms>
 - “PATA would create three new mechanisms to increase transparency around social media companies: Researcher-specific data access, Limited legal safe harbor for automated data collection, [and] Enhanced transparency through disclosures.” *Sen. Coons One-Pager*, retrieved from https://www.coons.senate.gov/imo/media/doc/pata_one_pager_118th_congress_june_2023.pdf
 - *Coons Section-by-Section analysis*, retrieved from https://www.coons.senate.gov/imo/media/doc/section_by_section_pata_act.pdf

- Federal Communications Commission, *FCC Proposes Disclosure Rules for the Use of AI in Political Ads*, released on July 25, 2024, retrieved from <https://www.fcc.gov/document/fcc-proposes-disclosure-rules-use-ai-political-ads>
- Meta, *How to identify AI content on Meta products*, retrieved from <https://www.meta.com/help/artificial-intelligence/1783222608822690/?srsltid=AfmBOop7wBc53FigW0Bx66Ri2545ZLAOiMBOM6ZLdvxi52sBxAkJW10o>
- When “profit and clout-motivated Page owners” create “AI-generated images on Facebook” that are viewed by Facebook users, “[c]omments on the images suggest that many users are unaware of their synthetic origin, though a subset of comments include text or infographics alerting others and warning of scams.”
 - MISINFORMATION REVIEW, Harvard Kenney School, *How spammers and scammers leverage AI-generated images on Facebook for audience growth*, August 15, 2024, retrieved from <https://misinforeview.hks.harvard.edu/article/how-spammers-and-scammers-leverage-ai-generated-images-on-facebook-for-audience-growth/>
- Lewis, Seth, Sanders, Amy Kristin, and Carmody, Casey, *Libel by Algorithm? Automated Journalism and the Threat of Legal Liability*, March 12, 2018, abstract retrieved from <https://journals.sagepub.com/doi/abs/10.1177/1077699018755983>

Panel 6:

Set Free by the Truth? Ethical Pitfalls Disinformation Presents for Attorneys

Moderator

Andrew Pauwels, Honigman, LLP, Detroit, MI

Panelists

Deanna Shullman, Shullman Fugate, PLLC, Tampa, FL

The relationship between attorneys and artificial intelligence continues to come into focus through a variety of sources, including reported opinions, long-awaited formal guidance from the American Bar Association, and an abundance of recent scholarship.

CLE Materials

- ABA Formal Opinion 512 (July 29, 2024), retrieved from <https://www.lawnext.com/wp-content/uploads/2024/07/aba-formal-opinion-512.pdf>
 - American Bar Association, *ABA issues first ethics guidance on a lawyer's use of AI tools*, July 29, 2024 (“model rules related to competency, informed consent, confidentiality and fees principally apply”), retrieved from <https://www.americanbar.org/news/abanews/aba-news-archives/2024/07/aba-issues-first-ethics-guidance-ai-tools/>
- In addition to the ABA guidance, “some state bar associations have released their own opinions or guidance on this topic. Below is a summary of these efforts to reconcile the benefits of cutting-edge technology with the traditional obligations of attorneys.” Justia, *AI and Attorney Ethics Rules: 50-State Survey*, retrieved from <https://www.justia.com/trials-litigation/ai-and-attorney-ethics-rules-50-state-survey/>
 - See, e.g., *Ethical Issues Regarding the Use of Artificial Intelligence*, Pennsylvania State Bar Association and the Philadelphia Bar Association, July 24, 2024, retrieved from <https://www.lawnext.com/wp-content/uploads/2024/06/Joint-Formal-Opinion-2024-200.pdf>
 - LawSites, *New Legal Ethics Opinion Cautions Lawyers: You ‘Must Be Proficient’ In the Use of Generative AI*, June 24, 2024, retrieved from <https://www.lawnext.com/2024/06/new-legal-ethics-opinion-cautions-lawyers-you-must-be-proficient-in-the-use-of-generative-ai.html>

- Recent judicial decisions regarding lawyers’ use of AI:
 - *Stephanie Wadsworth v. Walmart, Inc.*, -- F.R.D. --; 2025 WL 608073 (D. Wyo. Feb. 24, 2025), retrieved from <https://news.justia.com/wp-content/uploads/2025/02/Order-on-Sanctions-in-Wadsworth-v.-Walmart-Inc-et-al.pdf>
 - Justia Legal News, *Judge Fines Three Lawyers for Citing AI-Generated Fake Cases*, February 24, 2025, (plaintiff’s attorneys “filed Motions in Limine citing nine cases, eight of which do not exist”), retrieved from <https://news.justia.com/judge-fines-three-lawyers-for-citing-ai-generated-fake-cases/>
 - *United States v. Hayes*, -- F. Supp. 3d --; 2025 WL 235531 (E.D. Cal. Jan. 17, 2025) (“The citation has all the markings of a hallucinated case created by generative artificial intelligence (AI) tools such as ChatGPT and Google Bard that have been widely discussed by courts grappling with fictitious legal citations and reported by national news outlets.”), retrieved from <https://caselaw.findlaw.com/court/us-dis-crt-e-d-cal/116862866.html>
 - *Gauthier v. Goodyear Tire & Rubber Co.*, 2024 WL 4882651 (E.D. Tex. Nov. 25, 2024), retrieved from https://scholar.google.com/scholar_case?case=12295395131698828317&hl=en&as_sdt=6&as_vis=1&oi=scholar
 - “In *Gauthier v. Goodyear Tire & Rubber Co.*, counsel for the plaintiff submitted a response to a summary judgment motion that included citations to two nonexistent cases and multiple fabricated quotations.” BaterBotts, Trust, But Verify: Avoiding the Perils of AI Hallucinations in Court, December 9, 2024, retrieved from <https://www.bakerbotts.com/thought-leadership/publications/2024/december/trust-but-verify-avoiding-the-perils-of-ai-hallucinations-in-court>
 - In *Kruse v. Karlen*, Missouri Court of Appeals Eastern District, Order, No. ED111172, Feb. 13, 2024, a pro se litigant cited multiple “fictitious cases” hallucinated by ChatGPT, which produced citations “that have potentially real case names—presumably the result of algorithmic serendipity.” The plaintiff was ordered to pay \$10,000 in attorney fees for the “frivolous appeal.” Retrieved from https://www.courthousenews.com/wp-content/uploads/2024/11/2024-13-2-14-27-43-Opinion_ED111172-2.pdf

- *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023), retrieved from <https://cases.justia.com/federal/district-courts/new-york/nysdce/1:2022cv01461/575368/55/0.pdf?ts=1687525482>
- Order to Show Case, May 4, 2023, retrieved from <http://kautschlaw.com/wp-content/uploads/2024/03/050423-order-to-show-case-SDNY-RE-sanctions-for-ChatGPT.pdf>
- Affidavit of Steven A. Schwartz, unsealed on June 8, 2023 (Doc. 32, Attachment 1), retrieved from <http://kautschlaw.com/wp-content/uploads/2024/03/schwartz-affidavit.pdf>
 - "[A]ffiant has never utilized Chat GPT as a source for conducting legal research prior to this occurrence and therefore was unaware of the possibility that is content could be false." *Id.*, paragraph 11.
 - Schwartz told that court "that he was 'mortified' upon learning about the false cases, and when he used the tool he 'did not understand it was not a search engine, but a generative language-processing tool.'" Bohannon, M. *Lawyer Used ChatGPT In Court—And Cited Fake Cases. A Judge Is Considering Sanctions*, Forbes, June 8, 2023, retrieved from <https://www.forbes.com/sites/mollybohannon/2023/06/08/lawyer-used-chatgpt-in-court-and-cited-fake-cases-a-judge-is-considering-sanctions/?sh=384f1c227c7f>
- Van Voris, B. *Phony ChatGPT Brief Leads to \$5,000 Fine for NY Lawyers*, BloombergLaw.com, June 22, 2023, retrieved from <https://news.bloomberglaw.com/business-and-practice/chatgpt-phony-legal-filing-case-gets-lawyers-a-5-000-fine>
- The National Center for State Courts AI Policy Consortium – Resource Center: collects various literature on recent developments in courts' treatment of generative AI, including state court orders, state bar guidelines, caselaw, federal court rules (including individual judges' standing orders). See <https://www.ncsc.org/consulting-and-research/areas-of-expertise/technology/tri-ncsc-ai-policy-consortium/ai-policy-resources/state-activities/resource-center>
- Elephant, C., *Frequently Asked Questions and Suggested Best Practices Related to Generative Artificial Intelligence in the Legal Profession*, January 7, 2024, retrieved from <https://myshingle.com/wp-content/uploads/2024/01/AIFAQ-01092024.pdf>
- Above the Law, *Is The Legal Industry Ready For AI?*, May 24, 2024, retrieved from <https://abovethelaw.com/2024/05/is-the-legal-industry-ready-for-ai/>

- LawSites, *Federal Court Suspends Florida Attorney Over Filing Fabricated Cases Hallucinated by AI*, March 14, 2024, retrieved from <https://www.lawnext.com/2024/03/federal-court-suspends-florida-attorney-over-filing-fabricated-cases-hallucinated-by-ai.html>
- LawSites, *Free Legal Research Startup descrybe.ai Now Has AI Summaries of All State Supreme and Appellate Opinions*, March 14, 2024, retrieved from <https://www.lawnext.com/2024/03/free-legal-research-startup-descrybe-ai-now-has-ai-summaries-of-all-state-supreme-and-appellate-opinions.html>
- “[N]ewspaper accounts or non-legal academic support...are the exhibits that lawyers are going to query a consumer-facing AI to compile and it’s going to spit back a plausible but entirely fake article.” Above the Law, *Lawyer Sanctioned For Trying To File A Fake News Article As An Exhibit*, January 10, 2024, retrieved from <https://abovethelaw.com/2024/01/lawyer-sanctioned-for-trying-to-file-a-fake-news-article-as-an-exhibit/>
- Relevant ABA Model of Rules of Professional Conduct and Commentary
 - MRPC 1.1, *Competence*, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/
 - Comment on Rule 1.1, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/
 - MRPC 1.3, *Diligence*, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_3_diligence/
 - Comment on Rule 1.3, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_3_diligence/comment_on_rule_1_3/
 - MRPC 3.1, *Meritorious Claims & Contentions*, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_1_meritorious_claims_contentions/
 - Comment on Rule 3.1, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_1_meritorious_claims_contentions/comment_on_rule_3_1/

- MRPC 3.4, *Fairness to Opposing Party & Counsel*, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_4_fairness_to_opposing_party_counsel/
 - Comment on Rule 3.4, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_4_fairness_to_opposing_party_counsel/comment_on_rule_3_4/
- MRPC 4.1, *Truthfulness in Statements to Others*, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_4_1_truthfulness_in_statements_to_others/
 - Comment on Rule 4.1, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_4_1_truthfulness_in_statements_to_others/comment_on_rule_4_1/
- MRPC 5.3, *Responsibilities Regarding Nonlawyer Assistance*, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_3_responsibilities_regarding_nonlawyer_assistant/
 - Comment on Rule 5.3, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_3_responsibilities_regarding_nonlawyer_assistant/comment_on_rule_5_3/
- MRPC 7.1, *Communications Concerning a Lawyer's Services*, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_7_1_communication_concerning_a_lawyer_s_services/
 - Comment on Rule 7.1, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_7_1_communication_concerning_a_lawyer_s_services/comment_on_rule_7_1/
- MRPC 7.2, Rule 7.2: Communications Concerning a Lawyer's Services: Specific Rules, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_7_2_advertising/

- Comment on Rule 7.2, retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_7_2_advertising/comment_on_rule_7_2/



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Brendan Carr
Commissioner

November 13, 2024

Mr. Sundar Pichai
Chief Executive Officer
Alphabet Inc.

Mr. Satya Nadella
Chief Executive Officer
Microsoft Corporation

Mr. Mark Zuckerberg
Chief Executive Officer
Meta Platforms, Inc.

Mr. Tim Cook
Chief Executive Officer
Apple Inc.

Dear Messrs. Pichai, Zuckerberg, Nadella, and Cook,

Over the past few years, Americans have lived through an unprecedented surge in censorship. Your companies played significant roles in this improper conduct. Big Tech companies silenced Americans for doing nothing more than exercising their First Amendment rights. They targeted core political, religious, and scientific speech. And they worked—often in concert with so-called “media monitors” and others—to defund, demonetize, and otherwise put out of business news outlets and organizations that dared to deviate from an approved narrative.

Congressional investigations, press reports, and other evidence show that in many cases you did not act alone. Rather, you participated in a censorship cartel that included not only technology and social media companies but advertising, marketing, and so-called “fact-checking” organizations as well as the Biden-Harris Administration itself.¹ The relevant conduct extended from removing or blocking social media posts to labeling whole websites or apps as “untrustworthy” or “high-risk” in an apparent effort to suppress their information and viewpoints, including through efforts to delist them, lower their rankings, or harm their profitability. This censorship cartel is an affront to Americans’ constitutional freedoms and must be completely dismantled. Americans must be able to reclaim their right to free speech. Indeed, our democracy depends on freedom of expression.

¹ Michael Shellenberger, The Censorship-Industrial Complex, Part 2, Testimony Before the U.S. House Select Subcommittee on the Weaponization of the Federal Government (Nov. 30, 2023), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/shellenberger_testimony.pdf; see also U.S. House Judiciary Committee, Interim Staff Report, *GARM’s HARM: How the World’s Biggest Brands Seek to Control Online Speech* (July 10, 2024) (“Judiciary GARM Report”), <https://judiciary.house.gov/media/press-releases/how-worlds-biggest-brands-seek-control-online-speech>; see also Letter from Mark Zuckerberg to The Hon. Jim Jordan (Aug. 26, 2024), <https://x.com/JudiciaryGOP/status/1828201780544504064>.

I am confident that once the ongoing transition is complete, the Administration and Congress will take broad ranging actions to restore the First Amendment rights that the Constitution grants to all Americans—and those actions can include both a review of your companies’ activities as well as efforts by third-party organizations and groups that have acted to curtail those rights.

For now, I am writing to obtain information from you that can inform the FCC’s work to promote free speech and a diversity of viewpoints. As you know, Big Tech’s prized liability shield, Section 230, is codified in the Communications Act, which the FCC administers.² As relevant here, Section 230 only confers benefits on Big Tech companies when they operate, in the words of the statute, “in good faith.”³

It is in this context that I am writing to obtain information about your work with one specific organization—the Orwellian named NewsGuard.⁴ As exposed by the Twitter Files, NewsGuard is a for-profit company that operates as part of the broader censorship cartel.⁵ Indeed, NewsGuard bills itself as the Internet’s arbiter of truth or, as its co-founder put it, a “Vaccine Against Misinformation.”⁶ NewsGuard purports to rate the credibility of news and information outlets and tells readers and advertisers which outlets they can trust.⁷ As the U.S. House Committee on Small Business 2024 Staff Report stated, “[t]hese ratings, combined with NewsGuard’s vast partnerships in the advertising industry, select winners and losers in the news media space.”⁸ NewsGuard does so by leveraging its partnerships with advertising agencies to effectively censors targeted outlets.

² FCC General Counsel, *The FCC’s Authority to Interpret Section 230 of the Communications Act* (Oct. 21, 2020), <https://www.fcc.gov/news-events/blog/2020/10/21/fccs-authority-interpret-section-230-communications-act>.

³ 47 U.S.C. § 230(c) & (c)(2).

⁴ See, e.g., Sandy Fitzgerald, *Rep. Comer to Newsmax: NewsGuard’s Methods Must Be Probed*, Newsmax (June 21, 2024), <https://www.newsmax.com/newsmax-tv/james-comer-newsmax-newsguard/2024/06/20/id/1169509/>; see also Letter from Rep. James Comer to NewsGuard, Committee on Oversight and Accountability (June 13, 2024), at 1, <https://oversight.house.gov/wp-content/uploads/2024/06/Newsguard-Letter-061324.pdf> (“The Committee on Oversight and Accountability is investigating the impact of NewsGuard on protected First Amendment speech and its potential to serve as a non-transparent agent of censorship campaigns”).

⁵ Michael Shellenberger, *The Censorship Industrial Complex*, Testimony Before the U.S. House Select Subcommittee on the Weaponization of the Federal Government (Mar. 9, 2023), <https://docs.house.gov/meetings/IF/IF16/20230328/115561/HHRG-118-IF16-20230328-SD012.pdf?ref=drishtikone.com>.

⁶ Lee Fang, *Meet NewsGuard: The Government-Backed Censorship Tool Billed as an Arbiter of Truth*, The Federalist (Nov. 15, 2023), <https://thefederalist.com/2023/11/15/meet-newsguard-the-government-backed-censorship-tool-billed-as-an-arbiter-of-truth/>.

⁷ The U.S. House Committee on Small Business, Interim Staff Report, *Small Business: Instruments and Casualties of the Censorship-Industrial Complex*, Report, at 42 (Sept. 2024) (“U.S. House Committee on Small Business, CIC Report”), https://smallbusiness.house.gov/uploadedfiles/house_committee_on_small_business_-_cic_report_september_2024.pdf.

⁸ *Id.*

NewsGuard also works with web browsers, including Google's Chrome, Apple's Safari, and Microsoft's Bing. NewsGuard has partnered with social media companies. And it offers products for AI systems and app stores. In other words, your products may use NewsGuard or you may enable your customers to use NewsGuard.

But NewsGuard's own track record raises questions about whether relying on the organization's products would constitute "good faith" actions within the meaning of Section 230. For one, reports indicate that NewsGuard has consistently rated official propaganda from the Communist Party of China as more credible than American publications.⁹ For another, NewsGuard aggressively fact checked and penalized websites that reported on the COVID-19 lab leak theory.¹⁰ For still another, the Small Business Committee and multiple Media Research Center studies detail numerous instances where NewsGuard apparently does not apply its own rating system in an even-handed manner.¹¹ The list goes on.

Indeed, NewsGuard is the subject of an ongoing investigation by the U.S. House Committee on Oversight and Accountability for its impact on protected First Amendment speech.¹² And while NewsGuard claims that its mission is to provide apolitical guidance on "misinformation," NewsGuard undercuts this claim by retaining on its Advisory Board at least one person that signed the now infamous October 2020 letter from former intelligence community officials that flamed the false claim that the Hunter Biden laptop story was Russian disinformation—a letter that itself fueled a wave of censorship.

To help inform FCC action, please provide me with the following:

1. A list of every one of your products or services (if any, including advertising) that use or rely on any NewsGuard product, service, or ranking.
2. A list of every one of your products or services (if any) that enables any of your users or customers to use or rely on any NewsGuard product, service, or ranking.
3. If you offer an advertising service, provide details on the use of any media monitor or fact checking service, including NewsGuard, that you may utilize.

⁹ See, e.g., Joseph Vazquez, *MRC Exposes NewsGuard for Leftist Bias Third Year in a Row*, Media Research Center (Dec. 12, 2023) ("Media Research Center Analysis"), <https://newsbusters.org/blogs/free-speech/joseph-vazquez/2023/12/12/mrc-exposes-newsguard-leftist-bias-third-year-row>.

¹⁰ *Judiciary GARM Report* at 26; see also Michael Shellenberger, *X Post* (Aug. 3, 2023), <https://x.com/shellenberger/status/1687141879014391809>.

¹¹ *U.S. House Committee on Small Business, CIC Report* at 44–48; see also Media Research Center Analysis.

¹² U.S. House Committee on Oversight and Accountability, *Comer Demands NewsGuard Disclose All Government Contracts Amid Censorship Concerns* (June 10, 2024), <https://oversight.house.gov/release/comer-demands-newsguard-disclose-all-government-contracts-amid-censorship-concerns/>.

4. If you use third party advertising or marketing agencies to enable advertising within or with your products, please identify the advertising or marketing agencies you work or partner with.

I appreciate your prompt attention to this initial request. It can help ensure that a true diversity of viewpoints can flourish in this country as envisioned by the First Amendment. Please provide your complete response by **December 10, 2024**.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Carr', with a long horizontal flourish extending to the right.

Brendan Carr

RECEIVED

By Office of the Commission Secretary at 11:40 am, Sep 12, 2024



FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 24-39-A

AGENDA ITEM

For the meeting of September 19, 2024

TO: The Commission
The Office of the Commission Secretary

FROM: Shana Broussard *SB*
Commissioner

Allen Dickerson *AD*
Commissioner

Dara Lindenbaum *DL*
Commissioner

James E. "Trey" Trainor, III *TT*
Commissioner

DATE: September 10, 2024

RE: REG 2023-02 (Artificial Intelligence in Campaign Ads) -
Draft Interpretive Rule

In connection with REG 2023-02, we ask that the attached Draft Interpretive Rule be added to the Commission's agenda for the Open Meeting of September 19, 2024.

1 **FEDERAL ELECTION COMMISSION**

2 **[Notice 2024 - ____]**

3 **Interpretive Rule Regarding 52 U.S.C. 30124**

4 **AGENCY:** Federal Election Commission.

5 **ACTION:** Notice of Interpretive Rule.

6 **SUMMARY:** The Federal Election Commission is issuing guidance on the scope of 52
7 U.S.C. 30124, which bars the fraudulent misrepresentation of campaign authority.

8 **DATES:** [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

9 **FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant
10 General Counsel, or Ms. Jennifer Waldman, Attorney, 1050 First Street, NE., Washington,
11 D.C. 20463, (202) 694-1650 or (800) 424-9530.

12 **SUPPLEMENTARY INFORMATION:** The Federal Election Campaign Act (“FECA”
13 or “Act”) prohibits the fraudulent misrepresentation of campaign authority. It does so in
14 two ways: (1) by barring Federal candidates or their agents from fraudulently
15 misrepresenting themselves or organizations under their control as “speaking or writing or
16 otherwise acting for or on behalf of any other candidate or political party or employee or
17 agent thereof on a matter which is damaging to such other candidate or political party or
18 employee or agent thereof” or “willfully and knowingly” participating in or conspiring to
19 do so; and (2) by barring any person from “fraudulently misrepresent[ing]” themselves “as
20 speaking, writing, or otherwise acting for or on behalf of any candidate or political party
21 or employee or agent thereof for the purpose of soliciting contributions or donations” or
22 “willfully and knowingly” participating in or conspiring to do so. 52 U.S.C. 30124; *see*
23 *also* 11 CFR 110.16.

1 It has been suggested that this statute may have a specific application in light of
2 new developments in technology, especially content generated with the assistance of
3 artificial intelligence (“AI”). For this reason, the Commission is issuing this notice to
4 clarify that 52 U.S.C. 30124 and 11 CFR 110.16 apply irrespective of the technology used
5 to conduct fraudulent misrepresentation.

6 For purposes of 52 U.S.C. 30124, it does not matter whether a regulated person
7 uses any particular form of technology, including AI, in order to “fraudulently misrepresent
8 himself or any committee or organization under his control as speaking or writing or
9 otherwise acting for or on behalf” of another “candidate or political party or employee or
10 agent” or to engage in the “[f]raudulent solicitation of funds” by “misrepresent[ing] the
11 person as speaking, writing, or otherwise acting for or on behalf of any candidate or
12 political party or employee or agent thereof for the purpose of soliciting contributions or
13 donations.” 52 U.S.C. 30124(a)-(b). The legal question is whether the actor fraudulently
14 holds himself or herself out as “acting for or on behalf of any other candidate or political
15 party or employee or agent thereof.” *Id.* This fraud may be accomplished using AI-assisted
16 media, forged signatures, physically altered documents or media, false statements, or any
17 other means. The statute, and the Commission’s implementing regulation, is technology
18 neutral.

19 The Commission believes that this interpretation of its statute and attendant
20 regulation will clarify the scope of 52 U.S.C. 30124 in connection with evolving
21 technology, including AI-assisted media and future developments that remain unknown
22 and unpredictable.

1 This notice is an interpretive rule announcing the general course of action that the
2 Commission intends to follow. This interpretive rule does not constitute an agency action
3 requiring notice of proposed rulemaking, opportunities for public participation, prior
4 publication, or delay in effective date under 5 U.S.C. 533. It does not bind the Commission
5 or any members of the general public, nor does it create or remove any rights, duties, or
6 obligations. The provisions of the Regulatory Flexibility Act, which apply when notice and
7 comment are required by the Administrative Procedure Act or other relevant statute, do not
8 apply here. *See* 5 U.S.C. 603(a).

9
10
11 DATED: _____

12 On behalf of the Commission,
13
14
15

16 **Sean J. Cooksey,**

17 *Chairman,*

18 *Federal Election Commission.*

FCC News Distortion Policy: Elements

- (1) “Deliberate distortion” – not “mere inaccuracy or difference of opinion”
- (2) Extrinsic evidence (i.e., beyond the broadcast itself) showing that the broadcaster deliberately distorted or staged the news
- (3) Distortion of a “significant event” - not minor inaccuracies or incidental aspects of the report
- (4) Distortion involved the “principals, top management, or news management” of the licensee

News Distortion Complaint Against CBS

MR. BILL WHITAKER:

But it seems that Prime Minister Netanyahu is not listening. The Wall Street Journal said that he -- that your administration has repeatedly been blindsided by Netanyahu, and in fact, he has rebuffed just about all of your administration's entreaties.

VICE PRESIDENT KAMALA HARRIS:

Well, Bill, the work that we have done has resulted in a number of movements in that region by Israel that were very much prompted by, or a result of many things, including our advocacy for what needs to happen in the region. And we're not going to stop doing that. We are not going to stop pursuing what is necessary for the United States to be clear about where we stand on the need for this war to end.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JENNER & BLOCK LLP,
Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE, et al.,
Defendants.

Case Number: 1:25-cv-00916-JDB

**AMICUS BRIEF ON BEHALF OF SIXTY
MEDIA ORGANIZATIONS AND PRESS
FREEDOM ADVOCATES IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

**AMICUS BRIEF ON BEHALF OF SIXTY MEDIA ORGANIZATIONS AND PRESS FREEDOM
ADVOCATES IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION AND SUMMARY OF ARGUMENT

A news organization receives documents from a government source. The documents shed light on government activity, and could have profound consequences for national politics and international relations. But when the organization seeks to publish the documents, it finds itself gagged by a temporary restraining order obtained by the Department of Justice from a district court.

This is the familiar story of the Pentagon Papers case, and its famous conclusion that a claim of national security, especially one that “does not even attempt to rely on any act of Congress,” cannot overcome the right of the press to inform the public. *N.Y. Times Co. v. United States (Pentagon Papers)*, 403 U.S. 713, 718 (1971) (per curiam) (Black, J., concurring).

But the story could have played out differently. Imagine that, despite the fact that the TRO is a prior restraint, the newspaper cannot find legal counsel to challenge the order. “The case is a slam dunk, but we can’t take it,” the lawyers say, quietly. “The partners don’t want to get on the bad side of the current administration.” The organization’s in-house counsel goes to argue before the court, but hours after she files a notice of appearance, an executive order is issued. She is “dishonest” and her work is “dangerous.” Her client is a threat to “national security”, and as such, she is no longer able to enter a federal courthouse, nor confer with attorneys from the Department of Justice. The media organization doesn’t respond to the TRO and doesn’t publish the documents. The courts are never given the chance to balance competing constitutional interests and the documents remain hidden.

Such is the logical result of the Executive Order targeting Jenner & Block. Addressing Risks from Jenner & Block, Exec. Order 14,246, 90 Fed. Reg. 13997 (Mar. 25, 2025) (“Executive Order”). The President seeks the simultaneous power to wield the legal system against those who oppose his policies or reveal his administration’s unlawful or unethical acts—who, in many cases, have been members of the press—and then deny them access to the system built to defend their rights. The President could thus “permit one side to have a monopoly in expressing its views,” which is the “antithesis of constitutional guarantees.” *Frederick Douglass Found. Inc. v. District of Columbia*,

82 F.4th 1122, 1131 (D.C. Cir. 2023) (quoting *City of Madison Joint Sch. Dist. No. 8 v. Wis. Emp. Relations Comm'n*, 429 U.S. 167, 175–76 (1976)).

“Freedom of the press holds an . . . exalted place in the First Amendment firmament,” *Turner v. U.S. Agency for Global Media*, 502 F. Supp. 3d 333, 375 (D.D.C. 2020), because the press plays a vital role in the maintenance of democratic governance. To fulfill that function, the press relies on the work of lawyers. Lawyers assist the press in obtaining access to records and government spaces. They advise the press on how to handle sensitive sources and content. And they defend the press against civil and criminal threats for their publications. To publish the Pentagon Papers, the *New York Times* and *Washington Post* employed some of the most famous First Amendment lawyers in American history. These lawyers advocated for the newspapers’ editorial right to publish what it chose to, and counseled the newspapers on what they may nevertheless wish to withhold from public view. See Floyd Abrams, *Richard S. Salant Lecture on Freedom of the Press* at 22 (2013) (describing such conversations with the *New York Times*).¹ The government’s argument that one’s right to counsel must yield to the Executive’s declaration that such representation impairs public integrity, see Mem. in Supp. of Def. Mot. to Dismiss 31–32, ECF No. 20-1, would have prevented the newspapers from receiving such advocates and counsel. If the Executive Order stands, many lawyers will be chilled from taking on work so directly in conflict with the President, out of fear for the harm it would cause to their clients whose relationship with the government is more transactional. For the lawyers that remain, the threat of a similar executive order aimed at them or their law firms would practically prevent them from doing their jobs, by denying their access to the people and places necessary to adjudicate their issues.

This Court should grant Jenner & Block’s motion for summary judgment and make clear, in the strongest possible terms, that the Constitution does not allow the President to “wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Government hopes to make ‘secure.’” *Pentagon Papers*, 403 U.S. at 719 (Black, J., concurring).

¹ Available at <https://shorensteincenter.org/wp-content/uploads/2013/10/Salant-2013-Transcript-web.pdf>.

INTERESTS OF AMICI²

This *amici curiae* brief represents the view of sixty media organizations and press freedom advocates, spearheaded by Press Freedom Defense Fund (a project of The Intercept Media, Inc.) and the Freedom of the Press Foundation. *Amici* include newsrooms that publish information of public concern, associations that represent individual journalists and publications, organizations that advocate for press freedom, law firms that practice media law, and individual attorneys who collectively have more than five hundred years of practice experience on issues related to the First Amendment and press freedom. Although each signatory's vantage point may be different, *amici* are united by their understanding that the zealous advocacy of counsel is vital to the press's ability to inform the public and hold the government to account.

The Intercept Media, Inc. is a nonprofit news organization that publishes *The Intercept*, an award-winning, nationally recognized news organization with a reputation for in-depth investigations that focus on politics, national security, crime and justice, surveillance, corruption, the environment, science, technology, and the media. One of its projects is the Press Freedom Defense Fund that provides support, training and financial assistance to news organizations, individual journalists, and documentarians when confronted with security and legal threats.

Freedom of the Press Foundation ("FPF") is a nonprofit organization that protects, defends, and empowers public-interest journalism. The organization works to preserve and strengthen First and Fourth Amendment rights guaranteed to the press through a variety of avenues, including the development of technological tools, documentation of attacks on the press, training newsrooms on digital security practices, and advocating for the public's right to know. Many of the journalists and news outlets whose rights FPF helps protect could not do their important work without reliable access to pro bono legal representation.

A list of all other *amici* is provided in Appendix A.

² Pursuant to LCvR 7(o)(5) and FRAP 29(a)(4)(E), no party's counsel authored the brief in whole or in part; no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than the *amici curiae*, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

ARGUMENT

1. A Free Press Allows the Public to Check Overreaching Government but Requires Legal Support.

Plaintiff has filed declarations about the harm they have experienced because of the impact of the Executive Order on clients who work as government contractors. *See, e.g.*, Perrelli Decl. ¶ 75–77, ECF No. 19-30. *Amici* represent a constituency facing a second set of harms: those who are, by constitutional design, routinely antagonistic to the government. “The dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information.” *Pentagon Papers*, 403 U.S. at 723–24 (Douglas, J., concurring). “The Government’s power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.” *Id.* at 717 (Black, J. concurring). Against this threat of an overreaching government, “the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve.” *Mills v. Alabama*, 384 U.S. 214, 219 (1966).

In serving this role, the press acts as the public’s proxy, obtaining the information needed for democratic deliberation. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572–73 (1980) (the public, “instead of acquiring information . . . by firsthand observation . . . now acquire it chiefly through the print and electronic media”); *Sherrill v. Knight*, 569 F.2d 124, 129–30 (D.C. Cir. 1977) (“Not only newsmen and the publications for which they write, but also the public at large have an interest protected by the first amendment in assuring that restrictions on newsgathering be no more arduous than necessary, and that individual newsmen not be arbitrarily excluded from sources of information.”). The press sifts through the chaff to find the information most relevant to listeners. “[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to

bring to him in convenient form the facts of those operations.” *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975). Without such access, “important aspects of freedom of speech and ‘of the press could be eviscerated.’” *Richmond Newspapers, Inc.*, 448 U.S. at 580 (quoting *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)); see also *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936) (“The newspapers, magazines, and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern.”).

Threats to the press are therefore threats to the public, in concrete and practical terms. “When local newspapers shut their doors, communities lose out. People and their stories can’t find coverage. Politicos take liberties when it’s nobody’s job to hold them accountable. What the public doesn’t know winds up hurting them.” Kriston Capps, *The Hidden Costs of Losing Your City’s Newspaper*, BLOOMBERG CITYLAB (Mar. 30, 2018).³ These effects can be measured. Scholarship indicates that when local press closes, corporate misconduct increases. See Jonas Heese, Gerardo Pérez-Cavazos & Caspar David Peter, *When the Local Newspaper Leaves Town: The Effects of Local Newspaper Closures on Corporate Misconduct*, 145 J. FIN. ECON. 445, 446 (2022). The cost of governance also increases due to the lack of a public check on waste. See Pengjie Gao, Chang Lee & Dermot Murphy, *Financing Dies in Darkness? The Impact of Newspaper Closures on Public Finance*, 135 J. FIN. ECON. 445, 447 (2020) (calculating increase in municipal borrowing costs unconnected to economic conditions when local newspapers close in an area).

To serve this role the press requires access to government information, and that access is often contested. See *Sandvig v. Sessions*, 315 F. Supp. 3d 1, 15 (D.D.C. 2018) (“The First Amendment goes beyond protection of the press . . . to prohibit government from limiting the stock of information from which members of the public may draw.” (quoting *First Nat’l Bank of Boston v.*

³ <https://www.bloomberg.com/news/articles/2018-05-30/when-local-newspapers-close-city-financing-costs-rise> (last visited April 7, 2025).

Bellotti, 435 U.S. 765, 783 (1978)). A common forum of this contestation, well known to this Court, is under the Freedom of Information Act. Research by the Society of Professional Journalists showed that one in every five print news stories and one in ten television news stories relied on public records. MARGARET B. KWOKA, *SAVING THE FREEDOM OF INFORMATION ACT* 32 (2021). Among news requesters, “new media outlets, online or otherwise nontraditional media, are often the most frequent users of FOIA.” *Id.* at 68; *see, e.g., Oil and Water*, *THE INTERCEPT*⁴ (a multi-part series on surveillance and policing of the Standing Rock protests, built on a mixture of investigative news techniques, including public records); Chris Hacker et al., *Shot by A Civilian Wielding a Police Gun*, *REVEAL* (May 16, 2024) (an in-depth analysis of gun violence data, built on records released after the reporters prevailed in *Ctr. for Investigative Reporting v. Dep’t of Justice*, 14 F.4th 916 (9th Cir. 2021)).⁵ The fee-shifting provisions of FOIA help to incentivize the involvement of lawyers in advocating for access to records. *See Electronic Privacy Info. Ctr. v. NSA*, 87 F. Supp. 3d 223, 227 (D.D.C. 2015).

Beyond FOIA, the press and their lawyers often take the lead in ensuring the public preserves its common law and First Amendment rights to access the facilities of the government. Lawyers representing the press will work directly with courts to ensure meaningful public access to court proceedings and records. *See, e.g., In re Application for Access to Certain Sealed Video Exhibits*, 546 F. Supp. 3d 1, 4–5 (D.D.C. 2021) (discussing the Standing Order created with a coalition of press organizations for effectuating public access to video records in the Capitol Riot cases). The tests employed in adjudicating such access often involve balancing multiple constitutional interests and careful calculation around the scope of such privilege to different records and proceedings. *See id.* at 7–8; *Press-Enterprise Co. v. Superior Ct. of Cal.*, 478 U.S. 1, 13–15 (1986). Such processes functionally require counsel.

⁴ <https://theintercept.com/series/oil-and-water/> [<https://perma.cc/KZT9-VYMR>]

⁵ <https://revealnews.org/article/shot-by-a-civilian-wielding-a-police-gun/> [<https://perma.cc/JEH3-RA5P>]

Lawyers also help to advocate for the press when they need to assert their rights to protect their sources who provide information of public significance that has been secreted away. In recognition of “the special nature of a claim of a First Amendment right to gather information,” *Richmond Newspapers, Inc.*, 448 U.S. at 586, the Supreme Court has long held that “if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need . . . of the highest order.” *Bartnicki v. Vopper*, 532 U.S. 514, 528 (2001) (quoting *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 103 (1979)). But to realize that right, the press must frequently litigate its ability to publish information it has lawfully obtained. *See, e.g., Alabama Publisher Charged Over Report on Grand Jury Investigation*, U.S. PRESS FREEDOM TRACKER (Nov. 20, 2024) (a publisher who was briefly charged and restrained from publishing lawfully acquired information allegedly from a grand jury investigation).⁶ And because “the press’ function as a vital source of information is weakened whenever the ability of journalists to gather news is impaired,” the press has a qualified right to shield the identity of its sources and work product. *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981). Media organizations routinely require the assistance of lawyers in enforcing that privilege.

Similarly, lawyers will advise clients who run into legal issues while engaged in constitutionally protected on-the-street newsgathering activity. *See Sandvig*, 315 F. Supp. 3d at 15–16 (gathering cases); *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 595–96 (7th Cir. 2012). This is especially salient in situations where journalists cover protests, strikes, and other activity with high risk of participant arrest. *See, e.g., Goyette v. City of Minneapolis*, No. 20-cv-1302, 2022 WL 370161 (D. Minn. Feb. 8, 2022). Lawyers sometimes get involved in extended litigation and negotiation with law enforcement to form consent decrees that ensure reporters on the ground are not swept up in any enforcement actions. *See, e.g., Press Photographers Achieve Historic Settlement with New York City Police Department*, DAVIS WRIGHT TREMAINE (Sept. 5, 2023).⁷

⁶ <https://pressfreedomtracker.us/all-incidents/alabama-publisher-charged-over-report-on-grand-jury-investigation/> [<https://perma.cc/LF2X-D79J>]

⁷ <https://www.dwt.com/about/news/2023/09/press-photographers-achieve-settlement-with-nypd> [<https://perma.cc/UA3S-QM38>]

Finally, when a court imposes an unlawful prior restraint on a media outlet, they turn to their lawyers to see that such orders are reversed. While a prior restraint has long been held as “the most serious and the least tolerable infringement on First Amendment rights,” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976), the simple fact remains that courts will, all too frequently, allow a prior restraint to issue. *See Prior Restraint*, U.S. PRESS FREEDOM TRACKER.⁸ For example, earlier this year a state court judge in Mississippi ordered a local newspaper to remove an editorial criticizing local officials. Andrew DeMillo, *A Mississippi Judge Ordered a Newspaper to Remove an Editorial. Press Advocates are Outraged*, ASSOC. PRESS (Feb. 19, 2025).⁹ In these circumstances it takes the rapid action of lawyers to overturn such unconstitutional orders. *See CBS, Inc. v. Davis*, 510 U.S. 1315, 1317–18 (1994) (Blackmun, J., in chambers) (granting a stay of a preliminary injunction enjoining network from broadcasting news program on grounds that delay would cause irreparable harm to the news media).

While this state of affairs often means that the press and the government spar with one another, it is understood that this agon serves a higher purpose. “Investigative reporting . . . far from impeding the public interest, actually enhances it.” *Wessler v. Dep’t of Justice*, 381 F. Supp. 3d 253, 260 (S.D.N.Y. 2019). And critically, the forum for such disputes is in the judiciary, and cannot be surrendered to the whims of the Executive Branch. *See Sherrill v. Knight*, 569 F.2d 124, 128 n.14 (D.C. Cir. 1977) (in addressing a First Amendment challenge to the issuance of White House press credentials, “[w]e reject at the outset the contention . . . that this case is nonjusticiable” due to the claimed sole discretion of the Executive). This helps to ensure that the “essential role” served by the press is “to serve the governed, not the governors.” *Pentagon Papers*, 403 U.S. at 717 (Black, J., concurring).

⁸ <https://pressfreedomtracker.us/prior-restraint/> [<https://perma.cc/R483-FEZXX>]

⁹ <https://apnews.com/article/mississippi-newspaper-judge-editorial-removed-c0290c731da4e24799c0a62724f5da08> (last visited April 7, 2025).

2. The Oppositional Role of the Press Will Not Function if the Court Allows This Executive Order.

The cases above establish a predictable playing field between the press and the Executive Branch, overseen by the Judicial Branch. This Executive Order takes one set of players off the field. Given media's reliance on pro bono and low-cost counsel, the chilling effects of the Executive Order will be substantial, functionally making it impossible for many press organizations to serve as the public's proxy and a check on government abuse.

a. The government will inevitably use this authoritarian power to target the press.

Litigation has already spotlighted how the executive orders against law firms are, in effect, a vehicle for the personal frustrations of the President. *See, e.g.,* TRO Tr. at 101:11-25, *Perkins Coie v. U.S. Dep't of Justice*, 1:25-cv-00716 (D.D.C. filed Mar. 11, 2025) (highlighting how the claims against former Perkins Coie partners were a "personal grievance" and that the executive order could be understood as a "wholly personal vendetta"). Executive orders that followed against additional law firms have confirmed this. *See, e.g.,* Addressing Risks from WilmerHale, Exec. Order 14,250, 90 Fed. Reg. 14549 § 1 (Mar. 27, 2025) (citing Robert Mueller's investigation of members of President Trump's administration as evidence of conduct detrimental to critical American interests).

Given this track record, the press, or more specifically, the press and their attorneys, are logical next targets of these tactics. The current President has long displayed his distaste for the media. Between June 16, 2015 and January 8, 2021, President Trump insulted the media, claimed bias, or threatened to retaliate against members of the press over 2000 times. *See* Stephanie Sugars, *Trump's Negative Tweets About the Press*.¹⁰ Since 2021, President Trump has attacked outlets he viewed as hostile or insufficiently deferential, including saying they should be investigated and "pay a big price." *See* Oliver Darcy, *Trump and His Allies Are Threatening Retribution against the Press. Their Menacing Words Should Not Be Ignored*, CNN (Dec. 7, 2023).¹¹ President Trump has also sued

¹⁰ <https://docs.google.com/spreadsheets/d/1uNA6nsgcRhhQ0b6USsMNzhYLMfuDRSMhbGZNZ00WkHk/edit?gid=0#gid=0> [<https://perma.cc/NL7S-BVTL>]

¹¹ <https://www.cnn.com/2023/12/07/media/trump-threatens-retribution-against-press/index.html> [<https://perma.cc/3X25-BE8A>]

CBS, the *Des Moines Register*, and the Pulitzer Prize Board over speech he disagreed with. *See Trump v. CBS Broad., Inc.*, 2:24-cv-00236 (N.D. Tex. filed Oct. 31, 2024); *Trump v. Selzer*, 4:24-cv-00449 (S.D. Iowa filed Dec. 17, 2024); *Trump v. Members of the Pulitzer Prize Board*, 2022-CA-000246 (Fla. Cir. Ct. filed Dec. 14, 2022).

Like all Americans, President Trump is entitled to his opinions about press coverage, as well as to use the legal system to attempt to vindicate his rights. *See, e.g., Trump v. Trump*, No. 453299/2021, 2024 WL 133846 (N.Y. Sup. Ct. Jan. 12, 2024). However, the government has transformed his personal animus into federal action, routinely using executive power against press organizations that the administration dislikes or disagrees with. As one example, in 2021, this Court examined the behavior of Trump appointees within the U.S. Agency for Global Media (USAGM), finding that journalists were likely to succeed in showing that political appointees had engaged in unconstitutional retaliatory and chilling behavior against staff who were insufficiently deferential to the president, or even just too positive about his opponents. *Turner*, 502 F. Supp. 3d at 378–85. More recently, the White House barred the Associated Press from attending official events, due to its refusal to exclusively call the Gulf of Mexico the “Gulf of America.” *See Associated Press v. Budowich*, No. 25-cv-532, 2025 WL 1039572 at *10 (D.D.C. Apr. 8, 2025) (“The Government offers no other plausible explanation for its treatment of the AP.”). The Federal Communications Commission, under the leadership of Chairman Brendan Carr, has taken numerous actions in apparent alignment with the President to chill the press and freedom of expression. *See, e.g., Tom Wheeler, Trump’s CBS Lawsuit Ties Media Freedom to FCC’s Regulatory Power*, BROOKINGS (2025) (discussing a Letter of Inquiry to CBS regarding a “60 Minutes” interview that President Trump claims was edited to favor his former opponent, Kamala Harris);¹² Juan Carols Lara, *FCC Investigates SF Radio Station for ICE Reporting, Sparking Press Freedom Fears*, KQED (Feb. 6, 2025) (describing an investigation of KCBS for coverage of immigration enforcement actions in

¹² <https://www.brookings.edu/articles/trumps-cbs-lawsuit-ties-media-freedom-to-fccs-regulatory-power/> [<https://perma.cc/27YS-EANI>]

California);¹³ *Letter from Eighteen Civil Society Organizations to Chairman Carr* (Mar. 7, 2025) (raising several concerns about the FCC’s recent actions against the press).¹⁴ And the Trump administration has again targeted the U.S. Agency for Global Media, this time through terminating the majority of USAGM staff, requiring a judge to issue a temporary restraining order. *Widakuswara v. Lake*, --- F. Supp. 3d ---, 2025 WL 945869 (S.D.N.Y. Mar. 28, 2025); *see also* David Folkenflik, *A Bane for Tyrants Abroad, U.S.-Funded Networks Fear Fate Under Kari Lake*, NPR (Mar. 10, 2025) (detailing this and other attacks by the Trump Administration and Elon Musk against USAGM).¹⁵

This combination of animus and action makes it all but certain that, should this executive order stand, a similar version will be issued against law firms or legal organizations for their representation of the press. Even if that does not happen, firms that have represented outlets that Trump dislikes will take the hint and consider the consequences of doing so going forward.

b. The Executive Order will chill lawyers from working with the press.

The executive orders targeting law firms will deter lawyers from providing representation to clients that the President disagrees with and redirect legal services to favored causes. In the present case, the Executive Order against Jenner & Block specifically cites to the law firm’s advocacy on behalf of immigrants and transgender people, as well as its “partisan representations.” Executive Order § 1. Other executive orders and fact sheets against firms have similarly cited litigation against the government. *See, e.g.*, Addressing Risks from Perkins Coie LLP, Exec. Order No. 14,230, 90 Fed. Reg. 11781 (Mar. 6, 2025) (citing Perkins Coie’s litigation against voter identification laws). But perhaps the clearest sign of how the executive orders are meant to shape the practice of law is in the agreements that the Trump administration has come to with current and potential targets. Paul, Weiss, Rifkind, Wharton & Garrison LLP, a law firm which was

¹³ <https://www.kqed.org/news/12025977/fcc-investigates-sf-radio-station-for-ice-reporting-sparking-press-freedom-fears> [<https://perma.cc/D7GS-PU3M>]

¹⁴ <https://publicknowledge.org/policy/group-letter-to-fcc-chairman-carr/> [<https://perma.cc/S7WC-88KH>]

¹⁵ <https://www.npr.org/2025/03/10/nx-s1-5322493/radio-free-europe-asia-liberty-voice-of-america-usagm-kari-lake-doge> [<https://perma.cc/65QD-X9FW>]

the subject of a similar executive order, had the order targeting it rescinded after agreeing to dedicate the equivalent of \$40 million in pro bono legal services to support the Administration's initiatives. Addressing Remedial Action by Paul Weiss, Exec. Order 14,244, 90 Fed. Reg. 13685 (Mar. 21, 2025). There is no principle or rule one can draw from these actions, other than if you litigate against the President's interests, you should expect retaliation. Such an environment gives the Executive power "so broad as to provide no meaningful constraint upon the government's exercise." *Ateba v. Leavitt*, --- F.4th ---, 2025 WL 1036451 at *7 (D.C. Cir. Apr. 8, 2025) (cleaned up).

Lawyers understand the message. See TRO Tr. 54:25–55:3 (The "legal profession as a whole is watching and wondering whether its courtroom activities, in the best tradition of lawyering, will cause the federal government to turn its unwanted attention to them next."). "The [action against] one tells the others that they engage in protected activity at their peril." *Heffernan v. City of Paterson*, 578 U.S. 266, 273 (2016). Representation of those who wish to sue the government, or more generally, run afoul of the interests of President Trump, could come at an existential cost to their law firm. It is not realistic to expect for-profit law firms to risk losing paying clients for the sake of preserving their pro bono practice areas. They are far more likely to not represent clients that might be adversarial to the interests of President Trump or the government, like the press.

The press has another disadvantage: Independent media organizations and individual freelance journalists are rarely deep-pocketed clients. The past two decades have required journalism organizations to do more with significantly less. Advertising revenue is at a fraction of what it was, and the number of full-time journalists has fallen by tens of thousands. See STEPHEN GILLERS, JOURNALISM UNDER FIRE: PROTECTING THE FUTURE OF INVESTIGATIVE REPORTING 147–48 (2018); Luke Morgan, *The Broken Branch: Capitalism, the Constitution, and the Press*, 125 PENN. STATE L. REV. 1, 7–20 (2020) (collecting statistics on the collapse of the news industry). Local, small, and non-profit media organizations are especially resource constrained—sometimes not even able to afford to pay their contributors, let alone counsel. See Penelope Muse Abernathy & Sarah

Stonebely, *The State of Local News*, NW. MEDILL LOCAL NEWS INITIATIVE (Nov. 16, 2023);¹⁶ *see also* Michelle Rydell, *No Money to Fight*, QUILL (Oct. 5, 2009) (“It’s a reluctant sacrifice, but it’s a necessary one Although every news organization I have ever worked with regards public access as an extremely important priority, in a world of limited budgets, something has to give.” (quoting Mark Anfinson, a media lawyer)).¹⁷ Even back in 2016, two thirds of editors rated the news industry as “less able” to pursue legal activity around First Amendment-related issues than 10 years ago. Nine out of ten of those editors said this was because of money. *In Defense of the First Amendment*, KNIGHT FOUND. (Apr. 21, 2016).¹⁸ Things have only worsened since then.

Given these economic conditions, independent press relies upon the time and effort of lawyers working at free and reduced rates, usually because those lawyers believe in the self-governance value of the press. For example, the Center for Investigative Reporting announced in 2022 that it was only able to prevail in a six-year legal dispute with years of expensive discovery because a joint team from Covington & Burling¹⁹ and Davis Wright Tremaine defended it pro bono after its libel insurance was exhausted. D. Victoria Baranetsky, Simon Frankel & Thomas R. Burke, *International Charity Planet Aid Pays \$1.925 Million to Settle Six-Year Libel Lawsuit*, REVEAL (Oct. 20, 2022).²⁰ *Mississippi Today*, a nonprofit newsroom based in Jackson, Mississippi, relied on Gibson Dunn to protect privileged documents used in a years-long litigation that followed a Pulitzer Prize-winning investigation. *National Press Club Awards Mississippi Today with its Highest Press Freedom Award*, MISSISSIPPI TODAY (Sep. 25, 2024).²¹ Attempting to address this need, foundations

¹⁶ <https://localnewsinitiative.northwestern.edu/projects/state-of-local-news/2023/> [<https://perma.cc/P8MH-635A>]

¹⁷ <https://www.quillmag.com/2009/10/05/no-money-to-fight/> [<https://perma.cc/L3TT-7MH7>]

¹⁸ <https://knightfoundation.org/reports/defense-first-amendment/> [<https://perma.cc/5M2X-XSC4>]

¹⁹ Lawyers from Covington & Burling have themselves been the subject of orders limiting their ability to practice. *Suspension of Security Clearances and Evaluation of Government Contracts*, THE WHITE HOUSE (Feb. 25, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/suspension-of-security-clearances-and-evaluation-of-government-contracts/> [<https://perma.cc/45KH-J266>].

²⁰ <http://revealnews.org/press/international-charity-planet-aid-pays-1-925-million-to-settle-six-year-libel-lawsuit/> [<https://perma.cc/5AHH-5EPK>]

²¹ <https://mississippitoday.org/2024/09/25/national-press-club-award-freedom-mississippi-today/> (last visited Apr 2, 2025).

and non-profits have partnered to build out more pro bono resources. See *Lawyers for Reporters Connects Local News Outlets with Free Legal Services*, NIEMAN LAB (May 18, 2021) (describing the work of Lawyers for Reporters in providing pro bono legal services to local news outlets);²² *Groundbreaking Partnership to Develop National Pro Bono Media Law Network*, KNIGHT FOUND. (2021) (announcing partnership between Microsoft, Davis Wright Tremaine LLP and the Reporters Committee for Freedom of the Press to provide pro bono resources to independent media);²³ *Protecting Democracy, Accountability, and Freedom of Expression Nationwide Stories of Impact from the Legal Clinic Fund* (2022) [hereinafter *Legal Clinic Fund*] (describing a variety of pro bono support provided to independent journalists).²⁴ This phenomenon has been especially well documented in the context of FOIA and other public records work. *Legal Clinic Fund, supra* at 1 (discussing how The Bangor Daily News and the Portland Press Herald made use of pro bono legal support to obtain public records); *id.* at 6–7 (discussing how pro bono legal support led to a victory at the Puerto Rico Supreme Court and the release of use-of-force reports); *id.* at 8–9 (discussing how pro bono counsel assisted obtaining public records in a child abuse case); see also KWOKA, *supra* at 53–4 (discussing reliance on pro bono counsel for FOIA litigation). Law firms that take on FOIA work rely in part on the fee shifting provision it includes, but those fees are not guaranteed and are often calculated far below the cost of their time. Margaret Strouse, *Getting Laffey Out of Court: Rethinking the Calculation of Reasonable Attorneys Fees in FOIA Cases*, 37 COMM. LAWYER 18, 19 (2022).

Public records work is inherently adversarial to the government, and protecting media organizations can be directly adversarial, or at the very least, controversial. Law firms that focus their practices elsewhere will be less likely to take that risk if pro bono or low bono work comes

²² <https://www.niemanlab.org/2021/05/lawyers-for-reporters-connects-local-news-outlets-with-free-legal-services/> [https://perma.cc/63TU-CAU8]

²³ <https://knightfoundation.org/press/releases/groundbreaking-partnership-to-develop-national-pro-bono-media-law-network/> [https://perma.cc/65K6-D75X]

²⁴ <https://localnewslab1.wpengin.com/wp-content/uploads/2022/02/Legal-Clinic-Fund-Impact-Stories.pdf> [https://perma.cc/BR6X-PWXY]

along with an existential threat to their practice in the form of an Executive Order forcing their clients to fire them or restricting their access to court.

Lacking pro bono support, the threat to media organizations is substantial. We live in a time where media depends on counsel. The standards articulated in *New York Times v. Sullivan*, 376 U.S. 254 (1964), and progeny find themselves under renewed and relentless attack. “[T]he fates of the current crop of lawsuits designed to kneecap the *Sullivan* precedent ... might not be known for years” but will likely include “a damper on investigative journalism,” “[g]reater legal risks and higher insurance costs,” and “[n]ew dangers for anyone who speaks up about wrongdoing by authority figures or big businesses.” DAVID ENRICH, *MURDER THE TRUTH: FEAR, THE FIRST AMENDMENT, AND A SECRET CAMPAIGN TO PROTECT THE POWERFUL* 266–67 (2025). The federal government has substantially increased the prosecution of those who reveal information to the media. Heidi Kitrosser, *Media Leak Prosecutions and the Biden-Harris Administration: What Lies Ahead?*, 2021 U. ILL. L. REV. ONLINE 121, 123–24 (2021) (observing that the government has increasingly prosecuted such persons under the Espionage Act). There is evidence that judicial sanctions on reporters for refusing to reveal confidential sources are increasing. Christina Koningisor, *The De Facto Reporter’s Privilege*, 127 YALE L.J. 1176, 1250 (2018). The median jury damage award against the press has grown fivefold between the 1980s and mid 2010s. *MLRC 2025 Report on Trials and Damages*, MEDIA LAW RESOURCE CENTER BULLETIN at 8–9 (Mar. 2025).²⁵ The U.S. Press Freedom Tracker has documented 41 instances of prior restraint between 2017 and the filing of this brief. *U.S. Press Freedom Tracker*.²⁶ In the context of FOIA, an editor reported as far back as 2016 that “[g]overnment agencies are well aware that we do not have the money to fight. More and more, their first response to our records request is ‘Sue us if you want to get the records.’” *In Defense of the First Amendment*, KNIGHT FOUND. 27 (Apr. 21, 2016).²⁷ Despite that, few

²⁵ Available at <https://medialaw.org/wp-content/uploads/2025/03/2025-Bulletin-Issue-1-Trials-Damages.pdf>.

²⁶ <https://pressfreedomtracker.us/all-incidents/?categories=Prior+Restraint> [<https://perma.cc/CMU8-XLZW>]

²⁷ <https://knightfoundation.org/reports/defense-first-amendment/> [<https://perma.cc/5M2X-XSC4>]

FOIA requests result in litigation. Christina Koningisor & Lyrissa Lidsky, *First Amendment Disequilibrium*, 100 VA. L. REV. 1, 46 n.259 (2024) (finding that only .1% of federal FOIA requests result in a lawsuit). More recently, there is evidence that FOIA offices are being dismantled, making litigation truly the only option for fulfilling statutory rights. See Elaine Chen, Lizzy Lawrence & Isabella Cueto, *After RFK Jr.'s 'Radical Transparency' Pledge, HHS Shuttters Much of Its Communications, FOIA Operations*, STAT (Apr. 1, 2025).²⁸

These trends alone pose a risk to the press's core functions without pro bono counsel. But combine them with the Trump administration's legal attacks, described in section 2.a, and the situation is catastrophic. The Associated Press, CBS, and the journalists at the U.S. Agency for Global Media—all of these members of the media require counsel to defend themselves, counsel that could find themselves on the pointy end of an Executive Order. Those outlets may be able to pay for representation, but many cannot—and firms may be unwilling to represent even paying clients if it risks more lucrative representations. “The government need not ban a protected activity . . . if it can simply proceed upstream and dam the source.” *Buehrle v. City of Key West*, 813 F.3d 973, 977 (11th Cir. 2015). As the Supreme Court explained in *National Rifle Association of America v. Vullo*, “[t]he analogy. . . is to killing a person by cutting off his oxygen supply rather than by shooting him.” 602 U.S. 175, 197 (2024) (quoting *Backpage.com, LLC v. Dart*, 807 F.3d 229, 231 (7th Cir. 2015)). This analogy is apt here, as the First Amendment gives the press “breathing space.” *Sullivan*, 376 U.S. at 271–72. Chilling the flow of pro bono legal services will suffocate the media.

c. The lawyers that remain will be unable to do their jobs.

The chilling effect on pro bono counsel is only one component of the risk to the press. Another is the actual constraints of the Executive Order. “There can be little doubt . . . that state

²⁸ <https://www.statnews.com/2025/04/01/hhs-rfk-job-cuts-communications-foia-operations/> [<https://perma.cc/RS22-WYXW>]

action designed to retaliate against and chill an attorney's advocacy for his or her client strikes at the heart of the First Amendment.” *Eng v. Cooley*, 552 F.3d 1062, 1069 (9th Cir. 2009) (cleaned up).

Even lawyers who are dedicated to representing the press in spite of potential threats would not be able to do so effectively if the actions of the Trump administration are deemed constitutional. Under the government's theory of presidential power, there is no check on the limits of the executive to functionally disqualify attorneys, and little ability for courts to meaningfully intervene until it is too late. *See* TRO Tr. 34:3–36:35; Mem. in Supp. of Def. Mot. to Dismiss 28–30, ECF No. 20-1. Media organizations cannot protect against these risks by moving lawyers in-house, as the same logic could apply to sanctioning in-house attorneys as to law firms.

This offends separation of powers. To be an effective adjudicator for the rights of the press and the public, “[a]n informed, independent judiciary presumes an informed, independent bar” and any attempt by the Executive Branch to interfere with this “is inconsistent with the proposition that attorneys should present all reasonable and well-grounded arguments necessary for proper resolution of the case.” *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 545 (2001).

The Executive Order prohibits government employees from communicating with attorneys for firms that the President determines run counter to the interests of the United States. Mem. in Supp. of Pl.'s Mot. for Summ. J. 11, ECF No. 19-1. This would effectively prohibit such attorneys from representing media outlets in FOIA litigation, or even in pre-litigation FOIA negotiation. It would prohibit such attorneys from negotiating subpoenas from the Federal Bureau of Investigation, or from appearing in ongoing license investigations in front of the Federal Communications Commission. Under the plain text of the current order, government agencies could prohibit lawyers from attending in-person meetings or even seeking redress before a court. *See id.*; TRO Tr. 28–29.

Furthermore, there is nothing in the government's theory of presidential power that prevents the president from serially taking action against every lawyer and law firm that represents a particular client that the president dislikes. TRO Tr. at 30:6–35:12, *Perkins Coie v. U.S. Dep't of Justice*, 1:25-cv-00716 (D.D.C. filed Mar. 11, 2025); *see also id.* at 45:23–48:11 (explaining the

government’s position that “the President has that power, and that it is the right and prerogative of the President as the sole individual vested with Article II authority to exercise that prerogative”).

Given the depth of animus this administration has expressed for media organizations, such a campaign does not seem impossible. Any press organization that caught the executive’s eye would face the same choice as a law firm: give up or give in. Either way, the media organization could no longer fulfill its role as a check on the government and a proxy for the people.

3. Without a Robust Press, the Public will Lose a Key Vindicator of First Amendment Rights.

This threat does not solely affect *amici*, as risk to the press does not only affect the press. “Suppression of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change . . . muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free.” *Mills v. Alabama*, 384 U.S. 214, 219 (1966). The press holds a key place in our constitutional order, and “[a] broadly defined freedom of the press assures the maintenance of our political system and an open society.” *Time, Inc. v. Hill*, 385 U.S. 374, 389 (1967).

As the press is often the vehicle through which public rights are vindicated, the First Amendment’s balances depend upon a viable press ecosystem. Scholars have long warned that the financial state of the media weakens First Amendment rights. See Ronnell Andersen Jones, *Litigation, Legislation, and Democracy in a Post-Newspaper America*, 68 WASH. & LEE L. REV. 557, 574–76 (2011) (recapping how almost none of the newspapers involved in major media litigation could finance such litigation now); Martha Minow, *The Changing Ecosystem of News and Challenges for Freedom of the Press*, 64 LOYOLA L. REV. 499, 503–18 (2016) (outlining how the Constitution assumes the existence and viability of private news media); Christina Koningisor & Lyrissa Lidsky, *First Amendment Disequilibrium*, 100 VA. L. REV. 1, 44 (2024) (discussing how the decline of the press has led to more limited enforcement of First Amendment rights).

Simply put, the Executive Order is unlawful because “its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship.” *Lovell v. City of Griffin*, 303 U.S. 444 (1938). The end result of this Executive Order will be a chill on press freedom, less government accountability, and less vindication of First Amendment rights. This should not stand. After all, in the First Amendment “lies the security of the Republic, the very foundation of constitutional government.” *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937).

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to grant Jenner & Block’s motion for summary judgment and a permanent injunction.

Dated: April 11, 2025

Respectfully submitted,

/s/ Mason A. Kortz

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DISCLOSURE OF CORPORATE AFFILIATIONS

Pursuant to LCvR 26.1, I, undersigned, counsel of record for *amici curiae* certify that to the best of my knowledge and belief, that *amicus curiae* The Daily Beast Company, LLC is owned by IAC, Inc., which is a publicly held corporation. No other *amici curiae* have parent companies, subsidiaries, affiliates, or companies which own at least 10% of their stock and have any outstanding securities in the hands of the public.

Dated: April 11, 2025

/s/ Mason A. Kortz

Mason A. Kortz

CERTIFICATE OF COMPLIANCE

Pursuant to LCvR 7(o), I hereby certify that this brief conforms to the requirements of LCvR 5.4 and Fed. R. App. P. 29(a)(4) and does not exceed 25 pages in length. I further certify that the brief complies with the typeface requirements of LCvR 5.1(d) because it has been prepared using Microsoft Word in 12-point Crimson Pro font and is double-spaced.

Dated: April 11, 2025

/s/ Mason A. Kortz

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CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2025, I electronically filed the original of this brief with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

Dated: April 11, 2025

/s/ Mason A. Kortz

Mason A. Kortz

Digital Security Measures for Reporters to Mitigate Harassment

Last updated: April 18, 2025

If you are about to publish a story which you believe may put you at heightened risk of being exposed to harassment; or, if you have already published a story and are now facing harassment, below are some digital security pointers to help mitigate the harassment by going over some general tips for reporting and dealing with harassment, protecting your personal information, and maintaining good account security.

Reporting and Dealing with Harassment

Don't Feed the Troll

The cardinal rule of dealing with harassment is to not engage with the harasser directly, otherwise known as “not feeding the troll.” The personality types who typically engage in harassment thrive on attention and engagement, so depriving them of both is like depriving a fire of oxygen. No matter how tempting it may be to fire back at a harassing tweet, resist the urge to do so.

Report Harassment on Social Media

While it's typically best to not respond to a harasser, you can report both the specific harassing posts or messages, as well as the account in general to the social media platform being used to facilitate the harassment. Social media platforms typically have “report” links available for every post made, as well as the option to report the entire account. The report, if successful, leads to the post being taken down and/or to the harassing account being suspended. If the offending post is publicly-visible, you can privately ask others to report it, as well.

Keep Detailed Records

It is important to not delete harassing messages or emails, but to keep a record of them in case they are necessary later if the situation escalates and a police report needs to be filed or legal action needs to be taken. Keep any emails, voicemails, or other messages that a harasser sends, and take screenshots of any harassing posts made online in case they are deleted later (for publicly-visible posts, you may wish to use a website archiving tool such as archive.is and web.archive.org).

Set Up an Email Filter

If you are receiving harassing emails from someone, check if you can setup a custom filter in your email client to automatically move these messages to a separate folder so that you are not exposed to them directly in your primary inbox.

You can also report the email harassment to the harasser's email provider, though be aware that the harasser may be spoofing their email address.

Protecting Your Personal Information

Use a Data Broker Removal Service

Consider subscribing to a data broker information removal service, which submits removal request to various 'people finder' websites which may have your contact information. Consider procuring a subscription for both you and your partner and family members, if they are also at heightened risk of harassment due to responses to your reporting.

After creating an account with a data broker removal service, you login and provide the service with your email addresses, phone numbers, your current physical address and previous addresses, and other information. The removal service will then regularly monitor dozens of data broker and people finder sites for any of this information, and if it appears will submit opt-out information removal requests to these sites on your behalf.

Scrub Your Social Media

Be vigilant about what information you share about yourself, or have shared in the past. For example, if you have posted photos taken out of your front window, the harasser may be able to figure out where you live; or if you've posted that you're out celebrating your birthday, the harasser may be able to figure out your date of birth. Do a deep dive through your social media posts (including any old accounts you may not have checked in years), and delete anything that may inadvertently reveal personal information about yourself or family members.

Beware of Fake Accounts and Phishing Attempts

Be wary of accepting new friend requests on various social media platforms. Investigate the account making the friend request—has the account been recently created? What kinds of material has it posted in the past?

Be extremely cautious when receiving links in direct messages or via email, as well as when receiving file attachments. Harassers may send malicious links or attachments to either try to get your login credentials to various accounts, or to install spyware on your laptop or phone.

Hide Your Identity During Investigations

If you are investigating communities or websites which are known to be adversarial, be sure to use the [Tor Browser](#) and/or a VPN which has had independent security audits, such as [TunnelBear](#) or [Mullvad](#), to protect your IP address, and if registering an account be sure to use a burner email, phone number (if required), and username.

Consider a Credit Freeze

If you're based in the US, in case the harassers try committing financial identity theft against you, institute a [credit freeze](#) which should prevent anyone from being able to request your credit

report, which will also prevent harassers from being able to take out credit cards using your identity. Credit agencies are legally required to provide you with a free credit freeze, at your request. However, the credit agencies will sometimes try to sell you a proprietary monitoring service on top of the credit freeze, which you can just say ‘no’ to and state that you want to receive just the standard free credit freeze. In general, it’s not a bad idea to keep the credit freeze in place at all times, only temporarily removing it when you have a legitimate need to do so (for example, if applying for a new credit card or a mortgage).

Protect Your Family Members Too

Harassers may frequently target not just you, but your partner and family members as well. It’s a good idea to go over the various digital security tips in this document with your family members to make sure that they are also staying vigilant.

Account Security

Harassers may try to get into your various online accounts by trying passwords that they may find in breached password databases from various websites. It’s important that you use a strong and unique password for every account that you have, so that if the password to one account is discovered it doesn’t allow the harasser to access any of your other accounts. You can check if your email addresses appear in a known account breach by using the free service [Have I Been Pwned](#).

Lock Down Your Accounts

Use a password manager to not only store all your account passwords, but to also generate secure passwords.

Be sure to also enable two-factor authentication (2FA) on all of your accounts. Ideally, use physical security keys for all accounts that support them. If you don’t yet have a security key, or the particular account doesn’t support it, then use an authenticator app to generate one-time login codes. Use SMS as a form of 2FA only if the account doesn’t support security keys, an authenticator app, or any other form of 2FA, as SMS-based 2FA is the least secure form of 2FA since it is susceptible to someone taking over your phone number to gain access to your accounts.

If you use Google, consider enrolling in Google’s [Advanced Protection Program](#).

If you use Apple products, consider enabling [Lockdown Mode](#) on your MacBook and iOS devices. If you use iCloud, enable [Advanced Data Protection](#), and turn on 2FA with hardware keys.

Don’t Use SMS for 2FA

If you’re using SMS (text message)-based 2FA, and the service you’re using offers any other sort of 2FA, disable SMS. SMS is susceptible to social engineering attacks in which the harasser may gain control of your phone number and be able to access your accounts.

If the only option for 2FA is SMS, then you should still use it, since it's better than not using 2FA at all.

Set an Account PIN With Your Phone Carrier

Malicious actors can take over your phone number using a technique called "SIM swapping" which revolves around convincing a carrier to switch your phone number to a SIM card which the bad actor controls. You can make yourself less vulnerable to SIM swapping by making sure that you have set up an account PIN with your phone carrier. If you didn't set one up when you first got your phone plan, call your carrier and let them know that you would like to set up an account PIN. This will mean that anytime you call to make changes to your service, the carrier should ask you to provide a PIN before any changes can be made to your account. Check if any other services you use also allow you to set up an account PIN. If you setup a rudimentary four-digit PIN years ago, call your carrier to see if you can setup a more complex alphanumeric PIN.

Set up Bank Transactions Alerts

If your bank offers the option, enable transaction alerts. Whenever there is a transaction associated with your account, you will then receive a text message or email alert.

Perform a Self-Audit of Your Account Security Settings

Regularly perform a self-audit of each of your account's security settings. Popular services like Facebook or Twitter can make incremental updates to their settings and leave you opted-in by default to new settings which may be detrimental to your security and privacy. Periodically look through your account settings and make sure anything which looks fishy is disabled.

It is also not a bad idea to periodically check all of your accounts for any rogue third-party apps which may have gotten access to your accounts. Look through your account settings to find a list of third-party apps, and remove any apps which you don't recognize or no longer need. Ideally, you want to allow as few third-party apps as possible, so only enable those apps which you absolutely need. If you only use a particular app sparingly, uninstall it until you need it again, then install it anew instead of letting it linger on your device.

While doing a self-audit of your accounts, be sure to review the account login histories as well. The login histories show you which devices are currently logged in, as well as in some cases their location. If in doubt, log the device out.

EXHIBIT A
STATEMENT OF WORK

Date: September 4, 2024

The Press Freedom Defense Fund, a project of The Intercept Media, Inc., (“PFDF”) shall provide business operations advisory services to the Client as more fully described below. The nature of these Services are:

- Analyzing current business operations and workflows for operational risk
- Developing recommendations for operational improvements
- Providing guidance on process optimization
- Assisting with implementation of operational changes

The Services performed, and materials provided by The Press Freedom Defense Fund, a project of The Intercept Media, Inc., are for informational and reference purposes only. The information provided is based on experience and research into operations, strategies and processes of news organizations but should not be used as a substitute for professional legal counsel. For legal matters, please consult with a qualified attorney licensed to practice in your jurisdiction.

Depending on the needs of the News Organization, as determined by News Organization, The PFDF Audit program will review and provide operational recommendations concerning the following areas:

1. Tax-Exempt Status

- a. Governance, bylaws, state specific audit requirements
- b. Charitable registration
- c. Minutes and committee structure
- d. Campaign intervention or lobbying concerns
- e. Conflict disclosure forms and excess benefits
- f. Training on what is “material assistance”

2. Non-profit membership and donation marketing

- a. Privacy regulations
- b. SMS risks
- c. Negative option issues

3. Employment Practices

- a. Review of hiring practices
- b. Review of employee handbook
- c. Consideration of Collective Bargaining Agreements

4. Contracting with independent contractors throughout the organization

- a. Review process for contracting with freelancers and other independent contractor status
- b. Review of the grant of rights, including copyright and other intellectual property issues.

5. Physical & Mental Harassment

- a. Protocols on covering protests and other events
- b. Protocols on protection against doxing and swatting
- c. Evaluating policy for responding to swatting and doxing threats
 - i. Security
 - ii. Mental Health

6. Government Intrusion

- a. Review security training and awareness
- b. Review encrypted Email systems
- c. Review encrypted document archives
- d. Review of third-party applications and cloud

7. Espionage Act/Whistleblower Protections

- a. Review structure and security hygiene of investigative reporters, concerning:
 - i. Acquiring and evaluating leaks
 - ii. Ensuring communication hygiene
 - 1. External
 - 2. Internal
 - iii. Publication hygiene

8. Data Security

- a. Review of infrastructure
 - i. Server
 - ii. Third Party
- b. Review of data map
- c. Review and threat modeling for organization
- d. Review of cyber policies
- e. Review of Incident Response Plan

9. Defamation, Privacy, Sources

- a. Review of process to identify sensitive articles, source risks, and subpoena
- b. Review of risk profile of news organization, including subject matter of reporting
- c. Review of training on defamation, privacy, and other claims

10. Copyright

- a. Review of present copyright practices

- b. Review of licensing agreements
- c. Training on Copyright laws

11. Insurance

- a. Cost vs. benefit analysis/retention and policy
- b. Review of exclusions

12. Conflict zones reporting

- a. Review of OFAC compliance
- b. Review of organization's policies for protection of staff and freelancers

GUIDANCE ON TRAVEL SECURITY

Before traveling internationally with source or reporting information or other company data stored on an electronic device, please consider the following precautions:

- Use a burner cellphone and computer with no data on them.
- Delete unnecessary data, such as browser history and Signal messages, from your devices, even the burner devices, before crossing a border.
- Make sure you don't have sensitive contacts stored on the burner. Store them in an encrypted cloud provider, if need be.
- Uninstall apps with access to sensitive data, access to cloud storage, or that might be suspicious or incriminating, before your trip.
- Log out of any logged-in accounts which have access to sensitive data.
- Don't log into your usual iCloud or Google accounts on your burner device. If you need to create a burner Apple ID or Google account to access the play or app store.
- Disable fingerprint or facial recognition authentication on your devices (biometrics).
- Disable any other automatic logins.
- Leave your normal smartphone and/or work laptop at home and bringing dedicated travel devices with minimal data.
- Ensure you have access to a VPN or Tor before you leave.
- Make sure your devices are fully powered off (not just in sleep mode) prior to going through a security checkpoint.

When crossing a border, consider:

- Inform a colleague that you are deplaning and going through customs and then make sure all devices are powered off. After clearing customs, call or message your colleague and tell them you are safely through.
- Research possible sources of legal intervention (depending on the forum) and have that number available.

If you are stopped at a U.S. Border and questioned:

- Stay calm, never lie and understand that the Customs and Board Protection has the right to physically inspect electronic devices, luggage, and other items for contraband.
- Know your rights.
 - You are not required to share a password but your refusal may lead to device seizure. Visa holders may be denied entry if they refuse seizure.

- U.S. Citizens can refuse to answer questions beyond identity and travel details. Lawful permanent residents cannot be denied entry but may face additional scrutiny. Visa holders may be denied entry if they refuse to answer questions about their trip and visa status.
- Make sure U.S. Customs and Board Protection, U.S. Immigration and Enforcement or other law enforcement officer knows who you are:
 - You are journalist and that any materials you have are protected by the First Amendment of the United States, the common law, and specific state statutes.
 - You are exercising your right to remain silent.
 - You are requesting a lawyer.
- Refuse to sign any documents, except an inventory of seized devices if that should happen.
- Request a private phone call.
- Refuse to enter password to activate phone or computer.
- Document the Search:
 - Names and badge numbers of CBP agents
 - Questions asked
 - If interview is recorded, ask for transcript

Advisory on searches at the Border:

U.S. Customs and Border Protection officers have authority to stop and question individuals and conduct searches of vehicles within the 100-mile zone adjacent to a land border or coastline adjacent to an ocean or the Great Lakes. Furthermore, in this zone of authority, CPB maintains that it **does not need** a warrant to search any electronic device and has the right to take possession of computers and cellphones. This operating procedure is being challenged under First and Fourth Amendment grounds in cases like *United States v. Jatek Smith* (Appeal No. 24-1680, 2nd Circuit 2024).