

No. 20-16375

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

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KRISTIN M. PERRY, et al.,  
Plaintiffs-Appellees,  
CITY AND COUNTY OF SAN FRANCISCO,  
Intervenor-Plaintiff-Appellee,  
KQED, Inc.  
Intervenor-Appellee,

v.

GAVIN NEWSOM, in his official capacity as Governor of California, et al.,  
Defendants-Appellants,  
DENNIS HOLLINGSWORTH, et al.  
Intervenors-Defendants-Appellants,  
and  
PATRICK O'CONNELL, in his official capacity as Clerk-Recorder for the County  
of Alameda, et al.  
Defendants.

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On Appeal from the United States District Court for the  
Northern District of California  
Civil Case No. 09-CV-2292-WHO (Honorable William Orrick)

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**BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE  
FOR FREEDOM OF THE PRESS AND 32 MEDIA ORGANIZATIONS IN  
SUPPORT OF KQED, INC.'S OPPOSITION TO INTERVENORS-  
DEFENDANTS-APPELLANTS' MOTION FOR STAY PENDING APPEAL**

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[Caption continued on next page]

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## **CORPORATE DISCLOSURE STATEMENTS**

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

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MPA - The Association of Magazine Media has no parent companies, and no publicly held company owns more than 10% of its stock.

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The New York Times Company is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company owns 10% or more of its stock.

The News Leaders Association has no parent corporation and does not issue any stock.

Online News Association is a not-for-profit organization. It has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

POLITICO LLC's parent corporation is Capitol News Company. No publicly held corporation owns 10% or more of POLITICO LLC's stock.

Radio Television Digital News Association is a nonprofit organization that has no parent company and issues no stock.

Sinclair Broadcast Group, Inc. is a Maryland corporation which is publicly traded on NASDAQ under the symbol SBGI.

The Society of Environmental Journalists is a 501(c)(3) non-profit educational organization. It has no parent corporation and issues no stock.

Society of Professional Journalists is a non-stock corporation with no parent company.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

Univision Communications Inc. is wholly owned by Broadcast Media Partners Holdings, Inc., which is wholly owned by Univision Holdings, Inc. Grupo Televisa, S.A.B. indirectly holds a 10% or greater ownership interest in the stock of Univision Holdings, Inc. No publicly held company owns 10% or more of Univision Communications Inc. or any of its parent companies, subsidiaries, or affiliates.

## TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENTS.....	i
TABLE OF CONTENTS.....	vi
TABLE OF AUTHORITIES.....	vii
STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE.....	1
SOURCE OF AUTHORITY TO FILE.....	3
FED. R. APP. P. 29(A)(4)(E) STATEMENT.....	3
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT.....	6
I. Video and audio recordings convey context and information unavailable from a transcript.....	6
II. Access to video and audio recordings enhances reporting on matters of historic significance, including those involving the expansion of civil rights jurisprudence.....	11
III. Continued sealing of the Recordings for an undetermined period of time will harm the public.....	14
CONCLUSION.....	16
APPENDIX A.....	17
CERTIFICATE OF COMPLIANCE WITH RULE 32(G).....	27
CERTIFICATE OF SERVICE.....	28



**TABLE OF AUTHORITIES**

**CASES**

*Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731 (2020)..... 14

*Elrod v. Burns*, 427 U.S. 347 (1976) ..... 5

*Hollingsworth v. Perry*, 570 U.S. 693 (2013) ..... 11

*In re Application of CBS, Inc.*, 828 F.2d 958 (2d Cir. 1987)..... 7, 11

*In re Nat’l Broad. Co., Inc. (Myers)*, 635 F.2d 945 (2d Cir. 1980)..... 7

*Katzmann v. Victoria’s Secret Catalogue (in re Courtroom TV)*, 923 F. Supp. 580  
(S.D.N.Y. 1996)..... 10

*Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) ..... 4, 11, 13, 14

*Perry v. Schwarzenegger*, 302 F. Supp. 3d 1047 (N.D. Cal. 2018), *appeal dismissed*, 765 F. App’x 335 (9th Cir. 2019)..... 11

*Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), *aff’d sub nom. Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012)..... 4, 11, 14

*Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555 (1980). ..... 6, 15

*United States v. Criden*, 501 F. Supp. 854 (E.D. Pa. 1980) ..... 8

*United States v. Criden*, 648 F.2d 814 (3rd Cir. 1981)..... 7, 15

*United States v. Martin*, 746 F.2d 964 (3d Cir. 1984)..... 7

*United States v. Windsor*, 570 U.S. 744 (2013)..... 11, 13, 14

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A.O. Scott, *Rare Scenes Re-Emerge from Nuremberg Trials*, N.Y. Times (Sept. 28, 2010), <https://perma.cc/CH68-P4QD> ..... 10

Adam Liptak, *Court Announces Early Release of Same-Sex Marriage Arguments*, N.Y. Times (Mar. 19, 2013), <https://perma.cc/2BCH-WQ7A> ..... 12

Ariane de Vogue & Eli Watkins, *Supreme Court Won't Take up 'Making a Murderer' Case*, CNN (June 25, 2018), <https://perma.cc/CQ22-768F> ..... 9

Ashlie D. Stevens, *How the Fallout from Gabriel Fernandez's Harrowing Murder Inspired Netflix's Must-Watch Docuseries*, Salon (Feb. 26, 2020), <https://perma.cc/N2Y7-9MMP> ..... 8

Campbell Robertson, *Deal Free 'West Memphis Three' in Arkansas*, N.Y. Times (Aug. 19, 2011), <https://perma.cc/2WKQ-WNNU>..... 9

David-Elijah Nahmod, *Queerly Digital: To a More Perfect Union*, Echo Magazine (Oct. 11, 2019), <https://perma.cc/Z4LQ-GAJM> ..... 13

John DeFore, *"The Freedom to Marry": Film Review*, Hollywood Reporter (Mar. 10, 2017), <https://perma.cc/9THC-C8SL> ..... 13

John DeFore, *"To a More Perfect Union: U.S. v. Windsor": Film Review*, Hollywood Reporter (June 6, 2018), <https://perma.cc/XS33-E5NA>..... 13

Lyle Denniston, *Court to Release Same-Day Audio for Same-Sex Marriage Cases*, SCOTUSblog (Mar. 5, 2015), <https://perma.cc/KQ9V-KE55> ..... 12

*Making a Murderer: Eighteen Years Lost* (Netflix 2015)..... 9

Mike D'Angelo, *Paradise Lost Shows that Charisma Doesn't Need Movie-Star Looks*, AV Club (May 23), <https://perma.cc/HGZ8-7RBH>..... 9

*Supreme Court to Allow Same-Day Audio in Travel Ban Case*, Fix the Court (April 13, 2018), <https://perma.cc/K2PV-UYNL>..... 12

Terry Carter, *A Long-Forgotten Film on the Nuremburg Trials Helps Rekindle Interest in the Holocaust*, ABA Journal (Feb. 1, 2011), <https://perma.cc/7T5M-8CQD>..... 10

*Transcripts and Recordings of Oral Arguments (March 2018)*, SUPREMECOURT.GOV, <https://perma.cc/988L-H2LL> (last accessed April 29, 2020)..... 12

**RULES**

Fed. R. App. P. 29 ..... 3  
Northern District Civil Local Rule 79-5(g) ..... 4

## **STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE**

Amici curiae are the Reporters Committee for Freedom of the Press (the “Reporters Committee”), The Associated Press, Boston Globe Media Partners, LLC, BuzzFeed, Cable News Network, Inc., California News Publishers Association, Californians Aware, The Center for Investigative Reporting (d/b/a Reveal), Cityside, Dow Jones & Company, Inc., The E.W. Scripps Company, Embarcadero Media, First Amendment Coalition, First Look Media Works, Inc., Fox Television Stations, LLC, Gannett Co., Inc., Inter American Press Association, International Documentary Assn., Investigative Reporting Workshop at American University, Los Angeles Times Communications LLC, The Media Institute, MPA - The Association of Magazine Media, National Press Photographers Association, The New York Times Company, The News Leaders Association, Online News Association, POLITICO LLC, Radio Television Digital News Association, Sinclair Broadcast Group, Inc., Society of Environmental Journalists, Society of Professional Journalists, Tully Center for Free Speech, and Univision Communications Inc. A supplemental statement of identity and interest of amici curiae is included below as Appendix A.

Amici file this brief in support of KQED, Inc.’s Opposition to Intervenor-Defendants-Appellants’ Motion for Stay Pending Appeal. On August 12, 2020,

the U.S. District Court for the Northern District of California ordered the unsealing of videotape recordings of the 12-day trial that took place before the District Court in 2010 to determine the constitutionality of Proposition 8, a ballot measure that denied same-sex couples the right to marry in California. The trial was—and remains—an historic event of great public interest and importance. And news media amici led by the Reporters Committee have long-supported KQED, Inc.’s efforts to obtain access to those recordings for the benefit of the press and the public.<sup>1</sup> Amici write to emphasize the importance of the audio-visual recordings at issue to the ability of journalists and documentarians to completely and accurately inform members of the public who were not able to attend the trial in-person about the events that occurred in the courtroom. Amici urge the Court to deny Intervenors-Defendants-Appellants’ Motion to Stay Pending Appeal, as it would unnecessarily further delay access to those recordings.

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<sup>1</sup> See Br. of Amici Curiae The Reporters Comm. For Freedom of the Press and 36 Media Orgs. in Support of Media Intervenor KQED, Inc., *Perry v. Schwarzenegger*, No. 09-2292 (N.D. Cal., May 13, 2020), ECF No. 899-2; Br. of Amici Curiae The Reporters Comm. For Freedom of the Press and 35 Media Orgs. in Support of Intervenor-Appellee KQED, Inc. Urging Affirmance, *Perry v. Hollingsworth*, No. 18-15292 (9th Cir., Aug. 8, 2018), ECF No. 37.

**SOURCE OF AUTHORITY TO FILE**

Counsel for Plaintiffs-Appellees, Intervenor-Plaintiff-Appellee, Intervenor-Appellee, Defendants-Appellants, and Intervenors-Defendants-Appellants have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

**FED. R. APP. P. 29(A)(4)(E) STATEMENT**

Amici declare that:

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

## SUMMARY OF THE ARGUMENT

In 2010, five years before the U.S. Supreme Court held that same-sex couples had a constitutional right to marry in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the U.S. District Court for the Northern District of California enjoined enactment of Proposition 8, a state constitutional amendment denying same-sex couples the right to marry in California. *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 1004 (N.D. Cal. 2010), *aff'd sub nom. Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012) (“*Perry I*”). Audio-visual recordings of the 12-day bench trial were entered into the record and filed under seal (the “Recordings”). *See Perry I*, 704 F. Supp. 2d at 929. The Recordings have remained under seal for 10 years.

Plaintiffs-Appellees, Intervenor-Appellee KQED, Inc., and others have engaged in extensive litigation efforts over the course of many years to obtain public access to the Recordings. On August 12, 2020, the District Court, in accordance with the common law presumption of public access to judicial records and Northern District Civil Local Rule 79-5(g), denied a motion of Intervenor-Defendants-Appellants (the “Proponents”) to maintain the Recordings under seal. Order Denying Mot. to Maintain Seal; Unsealing Trial Recordings at 5, *Perry v. Schwarzenegger*, No. 09-2292 (N.D. Cal., July 9, 2020), ECF No. 909 (“Order”).

Despite failing to submit any evidence to the District Court that they or any trial witness “fears retaliation or harassment” if the Recordings are released, or any evidence at all that would demonstrate a compelling interest in maintaining the Recordings under seal, Order at 3, Proponents appeal the District Court’s Order and ask this Court to further delay press and public access to the Recordings for a period of months—and potentially years—while that appeal is pending. *See* *Intervenors-Defs.-Appellants Mot. for Stay Pending Appeal (“Proponents’ Motion”)*. Their motion to stay should be rejected. Proponents have identified no evidence or changed circumstances that would warrant continued sealing of the Recordings of a trial of unique historical significance and ongoing, paramount public interest. The press and the public, on the other hand, will unquestionably suffer from a continued denial of access to the Recordings. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

Though transcripts of the trial are available, access to the Recordings will provide the media and the public with a far more rich, informative understanding of the trial than can be obtained from even the most perfect transcription. A recording, unlike a transcript, conveys body language, inflection, tone of voice, and other contextual information vital to a complete understanding of a courtroom



proceeding. Indeed, the additional context provided by audio-visual recordings is critical to the work of broadcast journalists and documentarians.

Because access to the Recordings will provide the public with a richer, more fulsome account of the witness testimony and legal arguments in this historic trial—an account which has been unavailable to the public for the past decade—amici urge the Court to deny the Proponents’ Motion. Public access to the Recordings without further delay will ensure that this historic trial will at last be “open to all who care to observe.” *Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555, 564 (1980).

## ARGUMENT

### **I. Video and audio recordings convey context and information unavailable from a transcript.**

The Supreme Court has long recognized that, in reporting on trials of public interest, members of the news media act as surrogates for the public. *See Richmond Newspapers*, 448 U.S. at 573. Journalists have long strived to fulfill that duty, by providing accurate and thorough accounts of judicial proceedings—a job which is greatly aided by access to audio-visual recordings of those proceedings. Such recordings provide the best and most complete depiction of a trial and are the closest substitute for in-person attendance. There is a stark difference between

cold transcripts and audio-visual recordings, which convey body language, inflection, tone of voice, and the emotional tenor of the trial. *See In re Nat'l Broad. Co., Inc. (Myers)*, 635 F.2d 945, 953 (2d Cir. 1980) (“[S]eeing the [audio visual] tapes . . . will create a stronger impression of the events among those who already have been exposed to news accounts of their contents”).

Indeed, as the Third Circuit has recognized, “actual observation of testimony or exhibits contributes a dimension which cannot be fully provided by second-hand reports.” *United States v. Criden*, 648 F.2d 814, 824 (3rd Cir. 1981) (granting media access to copy and rebroadcast videotaped evidence in criminal trial of public officials); *see also In re Application of CBS, Inc.*, 828 F.2d 958, 960 (2d Cir. 1987) (granting the news media the ability to copy a videotaped deposition, noting that “[t]ranscripts lack a tone of voice, frequently misreport words and often contain distorting ambiguities as to where sentences begin and end”). And providing access to a video recording allows a viewer to become “virtually a participant in the events portrayed,” amplifying the impact of the information presented. *United States v. Martin*, 746 F.2d 964, 971–72 (3d Cir. 1984) (“The hackneyed expression, ‘one picture is worth a thousand words’ fails to convey adequately the comparison between the impact of the televised portrayal of actual events upon the viewer of the videotape and that of the spoken or written word

upon the listener or reader.”) (quoting *United States v. Criden*, 501 F. Supp. 854, 859–60 (E.D. Pa. 1980)).

The additional information and context provided by audio-visual recordings is particularly important for broadcast journalists and documentary filmmakers who depend on audio and video. Courtroom footage has served as an important component of several investigative documentaries, including the recent documentary series *The Trials of Gabriel Fernandez*, in which filmmaker Brian Knappenberger explored the habitual abuse and eventual murder of an 8-year-old boy by his mother and her boyfriend, and the systemic failings within the Los Angeles Department of Children and Family Services that may have led to its failure to protect the boy. Knappenberger incorporated footage of the Los Angeles Superior Court trial of Fernandez’s mother and her boyfriend into the series after experiencing firsthand the unique impact of seeing and hearing the events of the trial unfold: “We were listening to the testimony of first responders, and it was just so powerful and so moving . . . I’d heard of Gabriel’s story before . . . but I didn’t quite understand how intense it was.” Ashlie D. Stevens, *How the Fallout from Gabriel Fernandez’s Harrowing Murder Inspired Netflix’s Must-Watch Docuseries*, Salon (Feb. 26, 2020), <https://perma.cc/N2Y7-9MMP>.

In the critically acclaimed 1996 documentary *Paradise Lost: The Child*

*Murders at Robin Hood Hills*, filmmakers Joe Berlinger and Bruce Sinofsky made use of a “fair amount of footage from the original trial[s]” to paint a vivid picture of the three teenaged murder defendants that would not have been possible based on a transcript alone. Mike D’Angelo, *Paradise Lost Shows that Charisma Doesn’t Need Movie-Star Looks*, AV Club (May 23, 2014), <https://perma.cc/HGZ8-7RBH>. The documentary, and its 2000 and 2011 sequels, are credited with bringing national attention to the case and with raising questions as to the sufficiency of the evidence against the three defendants, keeping the case in the public eye until the men were ultimately freed from prison in 2011. See Campbell Robertson, *Deal Free ‘West Memphis Three’ in Arkansas*, N.Y. Times (Aug. 19, 2011), <https://perma.cc/2WKQ-WNNU>.

Similarly, the documentary series *Making a Murderer*, which incorporated video recordings of testimony and depositions in the murder trials of Steven Avery and Brendan Dassey, prompted a national conversation about the case and, in particular, concerns relating to Dassey’s confession. See *Making a Murderer: Eighteen Years Lost*, at 5:05 (Netflix 2015) (featuring one of many instances in which the documentarian used video footage of depositions of family members of the defendants); Ariane de Vogue & Eli Watkins, *Supreme Court Won’t Take up ‘Making a Murderer’ Case*, CNN (June 25, 2018), <https://perma.cc/CQ22-768F>.

Recordings also allow journalists to explore and report on lessons learned from past proceedings. For example, sixty-five years after the first international criminal trials were held in Nuremburg, Germany in 1945, critics applauded a documentary film incorporating audio and video from the trials for its “newness and freshness” in allowing audiences to hear, for the first time, “the rationalizations of the Nazi leaders in their own voices.” See Terry Carter, *A Long-Forgotten Film on the Nuremburg Trials Helps Rekindle Interest in the Holocaust*, ABA Journal (Feb. 1, 2011), <https://perma.cc/7T5M-8CQD>; A.O. Scott, *Rare Scenes Re-Emerge from Nuremburg Trials*, N.Y. Times (Sept. 28, 2010), <https://perma.cc/CH68-P4QD> (noting that “[c]ourtroom scenes—of [defendants] and others in the dock, listening on headphones as their deeds are enumerated and explained . . . arrive with the sickening shock of discovery, and with the anguished question that must have been on many minds in 1945: how did this happen?”).

Further, access to recordings of current and past judicial proceedings leads to more accurate journalism, including retrospective journalism. Armed with a recording, journalists and the public can more easily disprove inaccurate and misleading portrayals with ready access to primary source material. *Katzmann v. Victoria’s Secret Catalogue (in re Courtroom TV)*, 923 F. Supp. 580, 587 (S.D.N.Y. 1996) (finding that reporting on judicial proceedings “frequently is *more*

accurate and comprehensive when cameras are present”) (emphasis added)); *In re Application of CBS, Inc.*, 828 F.2d at 960 (“Because the videotape may in fact be more accurate evidence than a transcript . . . its availability to the media may enhance the accurate reporting of trials.”).

**II. Access to video and audio recordings enhances reporting on matters of historic significance, including those involving the expansion of civil rights jurisprudence.**

The Recordings at issue in this case constitute “an undeniably important historical record.” *Perry v. Schwarzenegger*, 302 F. Supp. 3d 1047, 1049 (N.D. Cal. 2018), *appeal dismissed*, 765 F. App'x 335 (9th Cir. 2019). As the first federal case to decide the constitutionality of a ban on same-sex marriage, *Perry I* is essential to a complete understanding of the history and development of LGBTQ civil rights jurisprudence.

The significant public interest in such judicial matters is reflected in the Supreme Court’s decision to release same-day audio of oral arguments in the three same-sex marriage cases heard by the Court to date: *Hollingsworth v. Perry*, 570 U.S. 693 (2013), in which the Court concluded that Proponents’ did not have standing to appeal the district court’s decision in *Perry I*; *United States v. Windsor*, 570 U.S. 744 (2013), in which the Court found Section 3 of the Defense of Marriage Act unconstitutional; and *Obergefell*, in which the Court held that the

U.S. Constitution protects the right of same-sex couples nationwide to marry. Under the Court's standard practice, audio recordings of oral arguments are not released until the end of the week in which they are heard. *Transcripts and Recordings of Oral Arguments (March 2018)*, SUPREMECOURT.GOV, <https://perma.cc/988L-H2LL> (last accessed April 29, 2020). However, in each of these three cases, the Court announced that it would release an audio recording on the same day of the argument, thus allowing the news media to incorporate audio from the proceedings in its reporting, and allowing the public to listen to the arguments in their entirety. See Lyle Denniston, *Court to Release Same-Day Audio for Same-Sex Marriage Cases*, SCOTUSblog (Mar. 5, 2015), <https://perma.cc/KQ9V-KE55>; Adam Liptak, *Court Announces Early Release of Same-Sex Marriage Arguments*, N.Y. Times (Mar. 19, 2013), <https://perma.cc/2BCH-WQ7A>. Indeed, until the Court's decision to provide a live audio feed of oral arguments in May 2020 due to the coronavirus pandemic, the three same-sex marriage cases were among only 27 cases in the Court's history for which same-day audio was made available to the press and the public. See *Supreme Court to Allow Same-Day Audio in Travel Ban Case*, Fix the Court (April 13, 2018), <https://perma.cc/K2PV-UYNL>.

The value of recordings like those at issue here is not limited to contemporaneous reporting. In recent years, documentarians have utilized audio recordings of oral arguments in the *Windsor* and *Obergefell* cases to provide powerful context to the legal issues presented in each case.

For example, in the 2017 documentary film, *The Freedom to Marry*, director Eddie Rosenstein uses audio recordings of the oral arguments in *Obergefell* to provide plaintiffs' attorney Mary Bonauto with a lens through which to evaluate and reflect on the events of the trial. See John DeFore, "*The Freedom to Marry*": *Film Review*, *Hollywood Reporter* (Mar. 10, 2017), <https://perma.cc/9THC-C8SL>. In the 2018 *Windsor* documentary, *To a More Perfect Union*, audio recordings of the oral arguments in *Windsor* were utilized by the filmmakers to provide a more fulsome and complete view of the issues and events leading to the Court's influential decision. See David-Elijah Nahmod, *Queerly Digital: To a More Perfect Union*, *Echo Magazine* (Oct. 11, 2019), <https://perma.cc/Z4LQ-GAJM> ("[T]hough the outcome of the case is well known (*Windsor* won) the section of the film which includes [attorney Roberta] Kaplan's oral arguments before the court and arguments from the opposing side play out like a well-done suspense drama."); see also John DeFore, "*To a More Perfect Union: U.S. v. Windsor*": *Film Review*, *Hollywood Reporter* (June 6, 2018), <https://perma.cc/XS33-E5NA>



("[T]he film follows oral arguments while offering personal context for those involved.") .

As a precursor to *Windsor* and *Obergefell*, *Perry I* was an historic, first-of-its-kind judicial proceeding, and a key case in the development of LGBTQ civil rights jurisprudence—a body of law which continues to develop, and in which there remains significant public interest, as evidenced in the Supreme Court’s recent decision in *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731 (2020) (finding it unlawful for an employer to fire an individual for being homosexual or transgender).

Public interest in *Perry I* will continue for generations. Providing access to the Recordings now will allow the news media and documentarians to engage in robust, nuanced reporting on a judicial case of historic significance in a way that would be otherwise impossible.

**III. Continued sealing of the Recordings for an undetermined period of time will harm the public.**

Despite the fact that same-sex couples in the United States have been constitutionally guaranteed the right to marry since the *Obergefell* decision in 2015, the public has been denied the ability to see and hear for themselves the events of *Perry I*, the trial that first presented this issue more than ten years ago. In

support of their attempt to further delay unsealing of the Recordings, Proponents argue that because they “have been safely under seal for ten years,” KQED and the public “will not be injured by delaying disclosure of the [R]ecordings during the pendency of an appeal.” *See* Proponents’ Motion at 21. To the contrary, however, it is precisely because the Recordings have been under seal for the past decade that their continued sealing is untenable. Not only is KQED harmed by the continued sealing of the Recordings, but the public is harmed by being deprived of the ability to see and hear the events of the trial firsthand. Proponents’ contention that the fact that journalists, documentarians, and the public have been denied access to these significant and historic Recordings for the last decade is reason to continue to deny the public access to them should be rejected.

Contrary to the claims of Proponents of unspecified “harms set to befall the public’s trust in its judicial institutions” if the Recordings are unsealed, Proponents’ Motion at 21–22, public access to the Recordings will only bolster confidence in the judicial process by allowing citizens who could not attend this historic trial in person to see, hear, and more fully understand what led to the first-of-its-kind decision by the District Court in *Perry I*. *See Richmond Newspapers*, 448 U.S. at 572; *see also Criden*, 648 F.2d at 822 (holding that the news media may copy tapes introduced into evidence at trial in part because “the public forum

values emphasized in [*Richmond Newspapers*] can be fully vindicated only if the opportunity for personal observation is extended to persons other than those few who can manage to attend the trial in person”). Given the unique historical significance of the case, and the public’s ongoing interest in it, access to the Recordings should no longer be denied.

### CONCLUSION

For the foregoing reasons, amici respectfully urge the Court to deny Proponents’ Motion for Stay Pending Appeal.

Respectfully submitted,

/s/ Katie Townsend

Katie Townsend

*Counsel of Record for Amici Curiae*

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Dated: July 27, 2020  
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## APPENDIX A

### Supplemental statement of identity of amici curiae

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

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

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

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

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

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

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

**The Center for Investigative Reporting** (d/b/a Reveal), founded in 1977, is the nation's oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website <https://www.revealnews.org/>, the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country.

**Cityside** is a nonpartisan, nonprofit media organization committed to building community through local journalism. Cityside publishes Berkeleyside and The Oaklandside, two of the leading independent, online news sites in the country.

**Dow Jones & Company** is the world's leading provider of news and business information. Through The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and its other publications, Dow Jones has produced

journalism of unrivaled quality for more than 130 years and today has one of the world's largest newsgathering operations. Dow Jones's professional information services, including the Factiva news database and Dow Jones Risk & Compliance, ensure that businesses worldwide have the data and facts they need to make intelligent decisions. Dow Jones is a News Corp company.

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

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

**First Amendment Coalition** is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order

to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

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

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



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

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

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

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

**Los Angeles Times Communications LLC** is one of the largest daily newspapers in the United States. Its popular news and information website, [www.latimes.com](http://www.latimes.com), attract audiences throughout California and across the nation.

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

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

**The National Press Photographers Association** (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its

creation, editing and distribution. NPPA's members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

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

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

**The Online News Association** ("ONA") is the world's largest association of digital journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and

support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

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

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

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

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

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

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

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

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I, Katie Townsend, do hereby certify that the foregoing brief of amici curiae:

- 1) Complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 5,047 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as calculated by the word-processing system used to prepare the brief; and
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/s/ Katie Townsend  
Katie Townsend  
*Counsel of Record*  
THE REPORTERS COMMITTEE  
FOR FREEDOM OF THE PRESS

Dated: July 27, 2020  
Washington, D.C.

## CERTIFICATE OF SERVICE

I, Katie Townsend, do hereby certify that I have filed the foregoing Brief of Amici Curiae electronically with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on July 27, 2020.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Katie Townsend  
Katie Townsend  
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THE REPORTERS COMMITTEE  
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