

Court of Appeals
of the
State of New York

In the Matter of

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

– against –

HARVEY WEINSTEIN,

Appellant.

**MEDIA COALITION'S MOTION FOR LEAVE TO APPEAR
AS *AMICI CURIAE* IN SUPPORT OF INTERVENOR
GANNETT SATELLITE INFORMATION NETWORK, LLC**

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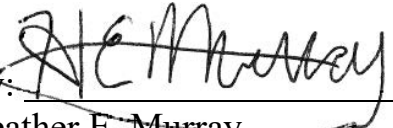
PLEASE TAKE NOTICE that, upon the accompanying proposed brief, Daily News, L.P., Insider, Inc., the National Press Photographers Association, the New York News Publishers Association, the New York Press Association, and the Reporters Committee for Freedom of the Press (the “Media Coalition”) will move this Court on January 22, 2024 at 9:30 a.m., or as soon thereafter as counsel may be heard, at Court of Appeals Hall, 20 Eagle Street, Albany, New York 12207, for an order granting the Media Coalition leave to file the accompanying brief as *amicus curiae* in support of Intervenor Gannett Satellite Information Network, LLC in the above-entitled proceeding, and for such other and further relief as the Court may deem just and proper.

The grounds for the motion are that the Media Coalition’s members are in a position to offer the perspective of news organizations and organizations that advocate for the First Amendment rights of the press and the public. As discussed in their proposed *amici curiae* brief, the Reporters Committee is an unincorporated association founded by leading journalists and media lawyers in 1970. Other *amici* are prominent news publishers and professional and trade groups, all of whom share an interest in access to criminal court records. Arguments that might otherwise not be brought to the Court’s attention, and that we respectfully submit would be of assistance to the Court, are set forth in the proposed *amici curiae* brief submitted herewith.

Dated: January 9, 2024

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 500.1(f) of the Rules of Practice of the Court of Appeals of the State of New York, the undersigned counsel for *amici curiae* states as follows:

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New York News Publishers Association has no parent, subsidiaries or affiliates and issues no stock.

New York Press Association has no parent, subsidiaries or affiliates and issues no stock.

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors. It has no parent, subsidiaries, or affiliates.

**STATE OF NEW YORK
COURT OF APPEALS**

In the Matter of :
PEOPLE OF THE STATE OF NEW YORK, :
 Respondent, : **APL-2022-00112**
 :
- against - :
 :
HARVEY WEINSTEIN, :
 Appellant. :

**AFFIRMATION IN SUPPORT OF MEDIA COALITION’S MOTION FOR
LEAVE TO APPEAR AS *AMICI CURIAE* IN SUPPORT OF INTERVENOR
GANNETT SATELLITE INFORMATION NETWORK, LLC**

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Heather E. Murray, duly admitted in the State of New York, hereby affirms under penalty of perjury that:

1. I am an attorney in good standing duly admitted to practice law before this Court and am Managing Attorney of the Local Journalism Project at the Cornell Law School First Amendment Clinic, the counsel for proposed *amici curiae* in this case.

2. I submit this affirmation in support of the Media Coalition's motion for leave to appear as *amici curiae* in support of Intervenor Gannett Satellite Information Network, LLC.

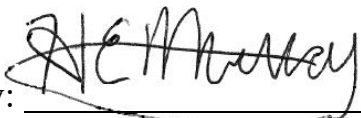
3. The Media Coalition's members are in a position to offer the perspective of news organizations and organizations that advocate for the First Amendment rights of the press and the public. As set forth in their proposed *amici curiae* brief, the Reporters Committee is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970. Other *amici* are prominent news publishers and professional and trade groups, all of whom share an interest in access to criminal court records.

4. *Amici* are ideally situated to assist this Court, and arguments that might otherwise not be brought to the Court's attention are set forth in the proposed *amici curiae* brief submitted herewith.

5. The accompanying brief has not been authored, in whole or in part, by counsel to any party in this case. No party or party's counsel contributed content to the brief or otherwise participated in its preparation.
6. No party or counsel to any party contributed any money intended to fund preparation or submission of this brief.
7. No person, other than *amici* or their counsel, contributed money that was intended to fund preparation or submission of this brief.
8. For the foregoing reasons, and for those stated in the proposed *amici curiae* brief, the Media Coalition respectfully seeks this Court's permission to serve and file the attached proposed amici curiae brief, and for such other and further relief as the Court may deem just and proper.

Dated: January 9, 2024
Ithaca, NY

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EXHIBIT

Court of Appeals
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State of New York

In the Matter of

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

– against –

HARVEY WEINSTEIN,

Appellant.

**PROPOSED *AMICI CURIAE* BRIEF OF MEDIA COALITION
IN SUPPORT OF INTERVENOR GANNETT SATELLITE
INFORMATION NETWORK, LLC**

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PRELIMINARY STATEMENT

At stake in this effort to unseal the docket of one of the most notable sex crime cases New York courts have adjudicated in recent memory is the public's and the press's ability to witness "the true administration of justice" by reaffirming the bedrock principle that the State's criminal dockets and decisions are open to the public. *Werfel v. Fitzgerald*, 23 A.D.2d 306, 312 (2d Dep't 1965); N.Y. Judiciary Law § 255-b ("A docket-book, kept by a clerk of a court, must be kept open, during the business hours fixed by law, for search and examination by any person."). Without access to the map of proceedings that court dockets provide, "the ability of the public and the press to attend civil and criminal cases" at all, to be exposed to and seek to comprehend the parties' written arguments, or even to learn of case outcomes after the fact, would be rendered "merely theoretical[.]" *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 93 (2d Cir. 2004).

The motion to intervene and unseal filed by Gannett Satellite Information Network LLC ("Intervenor") follows on the heels of a similar effort initiated by researchers at good government organizations Reinvent Albany and Scrutinize to demand greater access to criminal court decisions in a state where, according to their analysis, only an estimated six percent or less of criminal court decisions in recent years have been published. *See* Section I.B. In the weeks since it launched, that effort

already has spurred one legislator to pledge to work on legislation to address this lack of judicial transparency. *See id.*

The Court Clerk’s interpretation of New York Civil Rights Law Section 50-b (“Section 50-b”) to seal the entirety of the Weinstein docket and the parties’ filings improperly disfavors the public interest by thwarting accountability reporting by the press and the ability of researchers to hold the powerful to account. As Intervenor already explains in its briefing, this interpretation plainly runs afoul of the public’s First Amendment and common law rights of access. *See* Memorandum of Law in Support of Motion to Intervene for the Limited Purpose of Unsealing Records, dated Dec. 15, 2023 (“Intervenor’s Br.”), at Point II. For that reason, the doctrine of constitutional avoidance requires that Section 50-b be interpreted more narrowly to avoid violating the First Amendment.

Journalists and researchers routinely rely on court records to hold the judiciary and public officials entrusted with enforcing laws against sexual violence accountable for their actions. The Court Clerk’s decision not only stymies this accountability reporting, but, if followed by other courts, would threaten to shroud the adjudication of a whole category of criminal offenses—and the predators that perpetrate them—in unwarranted secrecy. *Amici* thus urge this Court to grant Intervenor’s motion and unseal the docket and filings in this case.

INTEREST OF THE AMICI CURIAE

Amici curiae are the Daily News, L.P., Insider, Inc., the National Press Photographers Association, the New York News Publishers Association, the New York Press Association, and The Reporters Committee for Freedom of the Press. A more detailed description of *amici* is contained in Appendix A to this brief.

As news media organizations and other organizations that defend the First Amendment and newsgathering rights of the press, *amici* have a strong interest in this case. The Court Clerk's unilateral decision cuts off access to a docket and other court records that would otherwise be open to the public in New York and throughout the country. The decision undermines the press's vital role in holding accountable public officials and criminal courts that enforce laws against sexual violence. *Amici* urge this Court to grant Intervenor's motion and unseal the docket for the reasons set forth in Intervenor's brief. *Amici* write separately to emphasize how the Court Clerk's interpretation of Section 50-b improperly disfavors the public interest and contravenes the doctrine of constitutional avoidance, which requires that the records be unsealed.¹

¹ No counsel for a party authored this brief in whole or part, nor did any person or entity, other than counsel for amici, contribute money toward preparing or submitting this brief.

ARGUMENT

Amici agree with Intervenor that Section 50-b cannot be relied on by the Court to shield these records for all the reasons described in its brief, including that the plain language and legislative history of Section 50-b does not provide for blanket sealing, that blanket sealing is incompatible with the public’s First Amendment and common law rights of access, and that the Weinstein victims have already been publicly identified, rendering wholesale sealing an exercise in futility. *Amici* write separately to make the following two points in support of Intervenor’s motion for access: (1) the Court Clerk’s interpretation of Section 50-b as a blanket sealing mechanism, contrary to the legislature’s intent, disfavors the public interest by thwarting accountability reporting by the press and the ability of researchers to likewise hold the powerful to account by monitoring the trajectory of the law; and (2) the doctrine of constitutional avoidance counsels that Section 50-b must be interpreted more narrowly than the Court Clerk has done here so as not to run afoul of the First Amendment right of access.

I. The Court Clerk’s Interpretation of Section 50-B Contradicts the Legislature’s Intent by Disfavoring the Public Interest

“A statutory interpretation that is ‘contrary to the dictates of reason or leads to unreasonable results is presumed to be against the legislative intent[.]’” *JJM Sunrise Auto., LLC v. Volkswagen Grp. of Am., Inc.*, 149 A.D.3d 1051, 1052 (2d Dep’t 2017) (citing Stat. Law § 143 (McKinney)). Section 50-b mandates that “[t]he

identity of any victim of a sex offense . . . shall be confidential[.]” subject to the relevant caveats that it “shall not be construed to prohibit disclosure” to “[a]ny person who . . . demonstrates to the satisfaction of the court that good cause exists for disclosure to that person” or “to require the court to exclude the public from any stage of the criminal proceeding.” N.Y. Civ. Rights Law § 50-b(1), (2)b, (4).

The Court Clerk’s overbroad interpretation of Section 50-b’s stated scope of protecting the identity of sex crime victims to instead require the sealing of an entire court docket leads to patently “unreasonable results[.]” *JJM Sunrise Auto., LLC*, 149 A.D.3d at 1052. Sealing an entire docket is tantamount in many cases “to exclud[ing] the public from any stage of the criminal proceeding[.]” N.Y. Civ. Rights Law § 50-b(4), in clear contravention of Section 50-b, because without the notice provided by docket sheets, “the ability of the public and press to attend civil and criminal cases would be merely theoretical[.]” *Hartford Courant Co.*, 380 F.3d at 93. Since “docket sheets provide a kind of index to judicial proceedings and documents,” they “endow the public and press with the capacity to exercise their rights guaranteed by the First Amendment.” *Id.* The Court Clerk’s decision also ignores that “good cause exists” for disclosure here and has been demonstrated by Intervenor. N.Y. Civ. Rights Law § 50-b(2)b; *see generally* Intervenor’s Br. at Points II-IV.

The Court Clerk’s interpretation also goes against the presumption that “a construction of a statute which tends to sacrifice or prejudice the public interests . . .

is not favored, and should be avoided if possible.” Stat. Law § 152 (McKinney). A court errs in interpreting a statute in a way that “runs counter to the statutory and public policy goal of protecti[on] . . . from ongoing threats.” *Ball v. Town of Ballston*, 173 A.D.3d 1304, 1308 (3d Dep’t 2019).

Here, the Court Clerk’s interpretation disfavors the public interest by allowing for the blanket sealing of otherwise routinely available appellate records based presumably on the mistaken notion that shielding not only the names of victims but the entire case file concerning the controversy somehow provides additional protection to victims that furthers the statutory aim. Instead, the decision does the opposite by obstructing accountability reporting on sexual predators and public officials entrusted with enforcing laws against sexual violence, as well as research seeking to promote judicial transparency and monitor the interpretation and enforcement of laws by police and the judiciary.

A. The Court Clerk’s Interpretation Obstructs Accountability Reporting on Crime, Public Safety, and the Criminal Justice System

Court records are critical primary sources for journalists, without which important stories that hold the powerful to account may never be told. Journalists deploy court records in a variety of ways: from breaking news, to quantifying problems, to observing patterns, to providing corroborating detail and background that ultimately “translates into better storytelling.” Roy Shapira, *Law As Source:*

How the Legal System Facilitates Investigative Journalism, 37 Yale L. & Pol'y Rev. 153, 177–80 (2018).

One of the most prominent examples of investigative reporters' reliance on court records in recent decades is the *Boston Globe*'s explosive investigation of sexual abuse in the Catholic Church, which won a Pulitzer Prize in 2003 “[f]or its courageous, comprehensive coverage . . . that pierced secrecy, stirred local, national and international reaction and produced changes in the Roman Catholic Church.” 2003 Pulitzer Prizes, pulizer.org, <https://www.pulitzer.org/prize-winners-by-year/2003>. Then-editor of the *Globe* Martin Baron requested that the paper seek to unseal court documents because he “was determined to avoid ‘he said, she said’ accounts” and knew that internal Church documents in court files “would be the key to opening the fuller story about what Father John Geoghan, the subject of scores of lawsuits, along with other priests and the church itself, had done to victims over the years.” Roy J. Harris, Jr., *The shot heard ‘round the Globe — still: Boston’s Catholic Church scandal turns 10*, Poynter Institute, available at <https://www.poynter.org/reporting-editing/2011/the-shot-heard-round-the-globe-still-bostons-church-scandal-turns-10/>. While the series led to major reforms, it also underlines the dangers of sealing: “The legal system had produced the damning information on the cover-up of child abuse many years before it became available to journalists” and, “one could argue, many cases of child abuse could have been

avoided” if the information had not been sealed. Roy Shapira, *Law As Source: How the Legal System Facilitates Investigative Journalism*, 37 *Yale L. & Pol'y Rev.* at 199.

Court records play a prominent role in an untold number of journalists’ investigations each year. One scholar’s efforts to quantify this role by examining prizewinning investigations spanning two decades found that “legal documents played a crucial role in over half of these paradigmatic cases of investigative journalism.” *Id.* at 157. A sampling of more recent prizewinning series demonstrates that they also heavily relied on court records. *See, e.g.*, 2023 Finalist in Investigative Reporting, Pulitzer Prizes, *available* at <https://www.pulitzer.org/prize-winners-by-category/206> (“exposing systemic failures in the state’s juvenile justice system that endangered the lives of young people and crime victims[,]” with court records demonstrating that children in the juvenile justice system “reoffend at alarmingly high rates”); 2022 Finalist in Investigative Reporting (“expos[ing] how financial service companies purchased settlements from vulnerable accident victims across the country, convincing them to give up millions of dollars, often with judges’ approval”); 2021 Winner in Investigative Reporting (“uncover[ing] a systematic failure by state governments to share information about dangerous truck drivers” through reviewing thousands of pages of court records and other source material).

B. The Court Clerk’s Interpretation Stymies Efforts By Researchers and Other Members of the Public to Hold the Powerful to Account

In addition to journalists, good government researchers and the public also rely on public access to court records to hold the judiciary, public officials, and other powerful figures to account. In November 2023, for example, a landmark report by researchers at government accountability organizations Reinvent Albany and Scrutinize found that while “there is a compelling public interest in making more judicial data publicly available,” only an estimated six percent or less of criminal court decisions in New York have in fact been published in recent years. Open Criminal Courts: New York Criminal Court Decisions Should Be Public [hereinafter, “Open Criminal Courts”], Scrutinize (Nov. 2023), 13-18, *available at* <https://www.scrutinize.org/reports> (detailing estimation methodology). The report’s publication has already spurred potential legislative reform, with State Senator Michael Gianaris pledging in the *Albany Times Union* to work with researchers and the Office of Court Administration to explore how best to introduce workable legislation “that would require the state’s court system to make decisions in criminal cases more publicly accessible as he seeks to improve transparency, better understand the records of judges, and scrutinize how the Legislature’s criminal justice policies are being interpreted.” Joshua Solomon, *Criminal cases are rarely published. Researchers want that changed*, *Albany Times Union* (Nov. 28, 2023),

<https://www.timesunion.com/state/article/rarely-published-push-publicize-criminal-case-18505061.php?IPID=Times-Union-state-spotlight>.

Researchers contend that making criminal court decisions public is critical not only “for promoting judicial transparency[,]” but also for “monitoring the implementation of new legislation” and tracing “the trajectory of constitutional law” that “affect[s] the entire public[.]” *Open Criminal Courts* at 8. Public access unquestionably aids in “assessing a judge’s candidacy as they seek appointment, reelection, or promotion” by shedding light on “how a candidate interprets the law, applies the law to the facts, and otherwise exercises their discretion and the powers of their office.” *Id.* at 8. Access also allows the public to monitor opposition to reform legislation, including, for example, “some criminal court judges express[ing] opposition and outright resistance to” recent discovery and bail reform laws. *Id.* at 9. Access additionally “serve[s] as a vital check on” unconstitutional “police actions[,]” including monitoring whether there is a resurgence of police stops targeting minorities long after the “NYPD’s controversial ‘stop and frisk’ policy was . . . declared unconstitutional by a federal court[.]” *Id.* at 10.

These reasons for making court decisions public apply with equal force to other criminal court docket entries that collectively shed light on judges’ decisionmaking, including in this case the parties’ briefs and the appellate record upon which the parties relied. Without public access to the evidence and arguments

submitted by the parties, it is impossible to fully scrutinize the merits of a particular decision. Indiscriminate sealing of criminal dockets and court filings thus severely hampers researchers' monitoring of the criminal justice system and investigative reporters' accountability reporting.

II. Section 50-b Must Be Construed to Avoid Violating the First Amendment

As explained in Intervenor's brief, the First Amendment right of access unequivocally extends to the court docket and other records at issue here. *See* Intervenor's Br. at Point II. Thus, an interpretation of Section 50-b that restricts Intervenor's access to the docket and the parties' filings violates the First Amendment right of access. *See, e.g., Hartford Courant Co*, 380 F.3d at 93.

New York courts avoid construing statutes so that they raise serious constitutional doubts whenever possible. *See, e.g., People v. Nieves*, 36 N.Y.2d 396, 400 (1975) (declining "to strike down the statute, in conformity with our traditional policy to construe statutes, if possible, in such a manner as to uphold their constitutionality"). The Supreme Court of the United States likewise regards the canon of constitutional avoidance as a "cardinal principle." *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018) (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)). Under this principle, a court should not construe a statute to violate the Constitution so long as a construction of the statute that avoids its unconstitutionality "is fairly possible." *Id.*; *Hooper v. California*, 155 U.S. 648, 657 (1895) (imploing courts to

resort to “every reasonable construction . . . to save a statute from unconstitutionality”). Such a construction is fairly possible when it is not “plainly contrary to the intent of [the legislature].” *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Trades Council*, 485 U.S. 568, 575 (1988). A court should not find that the legislature intended to enact a statute of doubtful validity unless such intent is “unmistakabl[e].” *Panama R. Co. v. Johnson*, 264 U.S. 375, 390 (1924).

Because Section 50-b does not even suggest, let alone require, wholesale sealing, the statute plainly does not evince the unmistakable legislative intent required to force this Court to confront the statute’s constitutionality. *See id.* An interpretation of Section 50-b that avoids violating the First Amendment is not only “fairly possible” here, *see Jennings*, 138 S. Ct. at 842, but indeed was undertaken by the Third Department in *People v. Burton*. 189 A.D.2d 532, 535 (3d Dep’t 1993). In that case, which is described in greater detail in Intervenor’s brief, the court explicitly avoided “[a] broader construction of Civil Rights Law § 50-b flatly mandating denial of public access to court documents in all sex offense cases” because it “would raise serious constitutional questions under the First Amendment.” *Id.* (citing *Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 608-10 (1982)); *see* Intervenor’s Br. at 22-23. This Court should take the same approach here. Because it is much more than “fairly possible” that Section

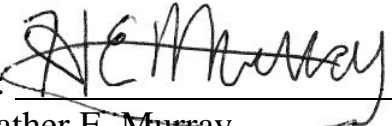
50-b can be interpreted to permit Intervenor access to the docket records, the doctrine of constitutional avoidance counsels that the Court should unseal the requested records.

CONCLUSION

For all the foregoing reasons, *amici curiae* respectfully request that this Court grant the relief requested by Intervenor and unseal the Weinstein docket and related court filings.

Dated: January 9, 2024
Ithaca, NY

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² The Clinic is housed within Cornell Law School and Cornell University. Nothing in this brief should be construed to represent the views of these institutions, if any.

NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.13 that the foregoing brief was prepared on a computer using Microsoft Word.

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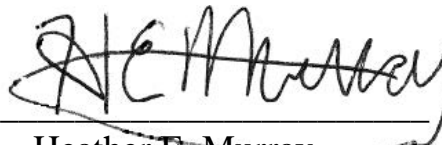
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Point size: 14

Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service certificate of compliance, corporate disclosure statement, questions presented, statement of related cases, or any authorized addendum containing statutes, rules, regulations, etc. is 3,252 words.

Dated: January 9, 2024

By: 
Heather E. Murray

APPENDIX A

SUPPLEMENTAL INFORMATION ABOUT *AMICI*

Daily News, L.P. publishes the New York *Daily News*, a daily newspaper that serves primarily the New York City metropolitan area and is one of the oldest media companies in the country with its first issue dating back to 1919.

Insider, Inc. (d/b/a Business Insider) is an online publication covering news, politics, lifestyle, and business across platforms and at the website businessinsider.com. It reports on matters affecting the discourse across the United States and the globe with a mission to inform and inspire, reaching millions of readers a day.

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 community. Since its founding in 1946, the NPPA has been the *Voice of Visual Journalists*, vigorously promoting the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism.

New York News Publishers Association is a trade association which represents daily, weekly and online newspapers throughout New York State. It was

formed in 1927 to advance the freedom of the press and to represent the interests of the newspaper industry.

New York Press Association (“NYPA”) is the 170-year-old trade association representing more than 700 print and digital news organizations in New York, including daily, weekly, ethnically-specific, religious, business, alternative news organizations, and magazines. NYPA’s programs and services are designed to promote and encourage the highest standards of journalism and a better understanding between the press and the public, and to enhance and ensure the financial viability and sustainability of New York’s news industry.

The Reporters Committee for Freedom of the Press (the “Reporters Committee”) is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to identify their confidential sources. Today, its attorneys provide *pro bono* legal representation and resources to protect First Amendment freedoms and the newsgathering rights of journalists.