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Reply to: Tampa

February 23, 2022

**VIA ELECTRONIC AND U.S. MAIL**  
(lhoshihara@ngnlaw.com)

Ms. Lynn Miyamoto Hoshihara  
Nabors, Giblin & Nickerson  
1500 Mahan Dr, Ste 200  
Tallahassee, FL 32308-5167

Re: Courthouse News Service

Dear Lynn:

As you will recall, our firm represents Courthouse News Service (“CNS”), which reports on newly filed civil cases, as well as subsequent filings, hearings, and rulings, in courts across the country. I write to address ongoing delays in access to new electronically filed circuit civil complaints and as a follow-up my January 4, 2022, letter that the Florida E-Filing Authority placed on its agenda but failed to discuss.

Despite mandatory e-filing, where basic intake work that was previously done by clerks at the intake counter is now done by e-filing software, newly filed non-confidential circuit civil complaints are not made available to the press and public while they sit in review queues and until after they are docketed (or processed) and approved by clerk staff. As a result, substantial delays in access to new filings are the norm, even though electronic filers enter docket information and pay the required filing fee before submitting their electronic filings to the court.

For example, CNS has tracked how long it takes for newly e-filed Broward County circuit civil complaints to be made available to the press and public. For a recent six-month period, only about 15% of new complaints were available without delay and one-third of the complaints, or 32%, were withheld for two or more days. Since the start of 2022, the rates have worsened: only 3% of complaints have made available without delay, while nearly two-thirds, or 62%, are withheld for two or more days.

In recent years, CNS has litigated the issue of pre-processing access to newly filed civil complaints under the First Amendment in federal courts across the country. Courts throughout the nation have recognized the First Amendment right of access to civil court records attaches upon receipt and

deemed unconstitutional similar no-access-before-process policies. See *CNS v. Schaefer*, 2 F.4th 318, 328 (4th Cir. 2021); *CNS v. Planet*, 947 F.3d 581, 596-97 (9<sup>th</sup> Cir. 2020) and, on remand, *CNS v. Planet*, No. CV 11-8083-DMG (FFMx), 2021 WL 1605216 at \*2 (C.D. Cal. Jan. 26, 2021); *CNS v. Gabel*, No. 2:21-cv-000132, 2021 WL 5416650 at \*13 (D. Vt. Nov. 19, 2021); *CNS v. Tingling*, No. 1:16 Civ. 8742 (ER), 2016 WL 8739010 at \*17 (S.D. NY Dec. 16, 2016); and *CNS v. Jackson*, No. 4:09-CV-01844, 2010 WL 11546125 (S.D. Tex. Mar. 2, 2010).

In the context of an e-filing court, the First Amendment requires access to newly filed civil complaints upon receipt on the day they are filed and prior to clerical review or docketing. See *Gabel*, 2021 WL 5416650, at \*17-18; and *Tingling*, No. 1:16 Civ. 8742 (ER), 2016 WL 8739010 (S.D. NY Dec. 16, 2016). In *Gabel*, where the Vermont clerks were also withholding access to newly e-filed civil complaints until after they were docketed/processed and approved by court staff, the clerks contended that Vermont's court rules authorized them to review newly electronically filed civil complaints for unredacted confidential information, as well as signatures, filing fees, and filing codes, before accepting complaints and making them publicly available. Notwithstanding that 54.8% of new cases were being made available on the day of filing, the District of Vermont issued an injunction enjoining the defendants from delaying press and public access until staff completed their pre-access processing activities. *Id.* at \*7, \*18. Shortly after this decision, newly e-filed non-confidential complaints in Vermont were made available to the press and public virtually immediately upon receipt for filing without prior processing.

We believe that the delays in access in Florida result from the docketing (or processing) of newly filed complaints before they are "accepted" and made available to the public, delays compounded by the amount of time complaints sit in review queues. Such policies are not acceptable because they cause unjustifiable delays and are therefore in violation of the First Amendment. See *CNS v. Schaefer*, 440 F.Supp.3d 532, 561 (E.D. Va. 2020), *aff'd* 2 F.4th 318 (4th Cir. 2021); *Planet*, 947 F.3d at 596-97 and, on remand, Amd. Judg., 2021 WL 1605216, at \*1 (C.D. Cal. Jan. 26, 2021); *Gabel*, 2021 WL 5416650, at \*17-18; *CNS v. Brown*, 2018 WL 318485 at \*6 (N.D. Ill. Jan. 8, 2018), *rev'd on other grounds*, 908 F.3d 1063 (7th Cir. 2018); *Tingling*, 2016 WL 8739010; *CNS v. Jackson*, 2009 WL 2163609, at \*4 (S.D. Tex. July 20, 2009) and, Final Judg., 2010 WL 11546125, at \*1 (Mar. 2, 2010). I note too that where CNS prevails in litigation, it is entitled to an award of attorneys' fees. In the *Schaefer* case, for example, CNS won an award of over \$1.9 million.

In light of the foregoing, I hope that the Authority will provide timely access to circuit civil complaints quickly on receipt and prior to the completion of processing, as required by the First Amendment, obviating the need for litigation. I am providing a draft of a federal court complaint which we are prepared to file if an amicable resolution cannot be reached.

We have suggested a constructive option: a public review queue. Our prior letter also listed many states that provide access to new filings within minutes of their receipt and described the relative ease of accomplishing this in courts that utilize an electronic filing system with vendors like Granicus, which has already assured the Authority that a public review queue can be accomplished in Florida, just like it has done in Arizona.

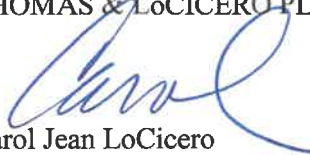
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We look forward to discussing these issues with you, but if not addressed by March 4, we intend to pursue this matter in federal court.

Very truly yours,

THOMAS & LoCICERO PL



Carol Jean LoCicero

enclosure

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

COURTHOUSE NEWS SERVICE,

Plaintiff,

v.

CASE NO. \_\_\_\_\_

BRENDA D. FORMAN, in her official capacity as the Broward County Clerk of Courts; the FLORIDA E-FILING AUTHORITY; and KAREN E. RUSHING, in her official capacity as chair of the Florida E-Filing Authority

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**COMPLAINT SEEKING DECLARATORY & INJUNCTIVE RELIEF  
FOR VIOLATION OF FIRST AMENDMENT RIGHTS**

Plaintiff Courthouse News Service (“Courthouse News”) hereby files this Complaint against Brenda D. Forman (“Clerk Forman”), in her official capacity as the Broward County, Florida Clerk of Courts (the “Clerk Forman’s Office”), the Florida E-Filing Authority (the “Authority”), because the Authority’s presence is needed to accord complete relief, and Karen E. Rushing (“Chair Rushing”), in her official capacity as chair of the Florida E-Filing Authority.

Courthouse News states:

**INTRODUCTION**

1. Since time beyond memory, the press in Florida and across the nation reviewed new civil complaints right after they crossed the counter – within minutes

of receipt and before docketing, or what is now called processing. Journalists reviewed new complaints as part of their coverage of the courthouse because complaints often contained news of local and national import. Those complaints were available for viewing quickly and whenever the court was open for business.

2. Most federal courts, including this Court, and many state courts carried that tradition of access into the modern era of electronic filing of new complaints and other documents. In those courts, the e-filing intake software now does the job the intake clerk did in the paper world. As any filer in federal court can observe, new filings become public within minutes after the automated intake.

3. Many state court systems also provide access to new civil complaints within minutes of receipt and prior to processing, through technological mechanisms, including state courts in Alabama, Arizona, California, Connecticut, Georgia, Hawaii, Nevada, New York, Utah, Vermont, and Washington. In fact, Arizona provides this access statewide through the same e-filing software vendor that Florida uses.

4. But another set of clerks and state court e-filing bodies adopted policies and practices that disrupted traditional access, blocking access to new complaints while they sit in electronic queues awaiting manual processing by clerk staff. That group includes Defendants. The advent of new technology such as e-filing should add light to the halls of government, not darken them.

5. In Florida's mandatory e-filing environment, Defendants have the power to provide traditional access, but they have ignored written requests to stop blocking public and press access until processing is complete. The resulting delays in access violate the First Amendment and damage news reporting. For a recent six-month period, public and press access to only 15% of the non-confidential Circuit Court civil complaints e-filed to Broward County was provided with no delay on the day of filing; one-third of the complaints, or 32%, were withheld for two or more days. At that point, they are old news.

6. The Florida Court's E-Filing Portal (the "Portal") is the statewide access point for e-filing documents, including new circuit civil complaints, virtually around-the-clock. The Portal uses software written by a private e-filing vendor, Granicus, which also wrote the e-filing software used by Arizona's court system. The Arizona system provides a public review queue for new complaints, accessible within minutes of filing and prior to the completion of processing. On information and belief, the same application that provides this access is available to Florida. Defendants could likewise provide pre-processing access to new civil complaints through a public review queue (or other practicable alternatives used by state and federal courts), thus providing traditional access to Broward County Circuit Court civil complaints. They have refused to do so, however.

7. The First Amendment to the United States Constitution provides the

public and press with a presumptive right of access to new, non-confidential circuit civil complaints that attaches when a complaint is electronically filed; i.e., received by the Portal. Grounded in the right of free speech, such access is fundamental to the press and the public: it is essential to accurate and fair reporting of new civil court actions before they become yesterday's news and vital to the public's ability to understand and debate what is occurring in the judicial branch.

8. The policies and practices of Defendants are a matter of choice. There is no overriding justification for them and less restrictive alternatives are readily available. As a result, Defendants' policies and practices of withholding access violate the United States Supreme Court's seminal ruling in *Press-Enterprise Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1(1986).

9. Courts throughout the nation have recognized the First Amendment right of access to civil court records attaches upon receipt and deemed unconstitutional similar no-access-before-process policies. See *Courthouse News Service v. Schaefer*, 2 F.4th 318, 328 (4th Cir. 2021); *Courthouse News Service v. Planet*, 947 F.3d 581, 596-97 (9<sup>th</sup> Cir. 2020) and, on remand, *Courthouse News Service v. Planet*, No. CV 11-8083-DMG (FFMx), 2021 WL 1605216 at \*2 (C.D. Cal. Jan. 26, 2021); *Courthouse News Service v. Gabel*, No. 2:21-cv-000132, 2021 WL 5416650 at \*13 (D. Vt. Nov. 19, 2021); *Courthouse News Service v. Tingling*, No. 1:16 Civ. 8742 (ER), 2016 WL 8739010 at \*17 (S.D. NY Dec. 16, 2016); and

*Courthouse News Service v. Jackson*, No. H-09-1844, 2009 WL 2163609, at \*5 (S.D. Tex. July 20, 2009).

10. Courthouse News brings this action under the First Amendment to challenge Defendants' policies and practices of withholding public and press access to new civil complaints electronically filed to Circuit Court in Broward County, Florida, while they sit in work queues and until after processing is completed, work that regularly takes two to three days. This no-access-before-process policy violates the First Amendment.

#### **JURISDICTION AND VENUE**

11. Courthouse News' claims arise under the First and Fourteenth Amendments to the United States Constitution and the Civil Rights Act, 42 U.S.C. §§ 1983, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights) and 2201 (declaratory relief). Defendants are subject to personal jurisdiction in this Court and judicial district.

12. Venue is proper in this district under 28 U.S.C. § 1391(b). The Authority resides in Tallahassee, Florida, and Chair Rushing chairs its board. On information and belief, the Portal itself is operated primarily out of Tallahassee offices. The defendants are residents of the state of Florida. Further, a substantial part of the events or omissions giving rise to Courthouse News' claim occurred in this district.



## PARTIES

13. Courthouse News is a California corporation with its principal place of business in Pasadena, California. A widely read news service with thousands of subscribers, including other media outlets, Courthouse News specializes in reporting about civil lawsuits from filing through the appellate level in state and federal courts throughout the United States. Courthouse News' comprehensive and timely coverage of civil litigation through its print, website and e-mail publications has made it a go-to source of information about the nation's civil courts.

14. Clerk Forman is the elected Broward County Clerk of Courts and is sued in her official capacity only. In that capacity, Clerk Forman is responsible for, among other things, the administration of public access to court records, including new non-confidential Seventeenth Judicial Circuit of Florida civil complaints. The Seventeenth Judicial Circuit encompasses only Broward County, Florida.

15. Acting in her official capacity, Clerk Forman and those acting under her direction and supervision are directly involved with and responsible for implementing the policies and procedures that result in the withholding of access to newly filed complaints that the press and public experience.

16. The Authority is a public entity created pursuant to the Florida Interlocal Cooperation Act, Chapter 163.01, Florida Statutes, and the 2010

Interlocal Agreement Establishing The Florida E-Filing Authority, entered into among the Clerks of Court, including the Broward County Clerk of Court, and the Florida Supreme Court. The Authority “holds all right, title and interest to” the Portal and administers the Portal, defined in the interlocal agreement as a “statewide access point for electronic access to Court Records and the transmission of Court Records to and from the court.”

17. As required by the interlocal agreement creating the Authority, Chair Rushing is the chair of the Authority because she is also the chair of the Technology Committee of the Florida Association of Court Clerks, Inc. (the “Association”). The Association is based in Tallahassee, and the Authority contracts with the Association to operate the Portal on the Authority’s behalf out of the Association’s Tallahassee offices. The chair has significant power and authority under the interlocal agreement to act on behalf of the Authority in furtherance of the purposes of the interlocal agreement. Chair Rushing is sued in her official capacity only.

18. Courthouse News is informed and believes that Defendants are each necessary and indispensable parties because, acting together, they receive new, non-confidential Broward County Seventeenth Judicial Circuit civil complaints. Such complaints are initially received by the Authority via the Portal on behalf of Clerk Forman’s Office, and automatically flow into a Broward County work

queue/inbox accessible to Clerk Forman's Office. Those complaints are withheld from Courthouse News and the public until Clerk Forman's Office completes processing. Only then is a complaint made publicly available through Clerk Forman's website. Courthouse News is further informed and believes that no Defendant, acting independently, can provide Courthouse News with complete relief in this action. Among other reasons, Defendants play critical roles in the development and execution of the policies and practices concerning and affecting press and public access to court records in Broward County, including but not limited to policies and practices resulting in delayed access to new e-filed, non-confidential circuit civil complaints.

19. Defendants' actions, as alleged in this Complaint, and the resulting delays and denials in access to new non-confidential circuit civil complaints are under the color of law and constitute state action within the meaning of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

20. Courthouse News seeks prospective injunctive and declaratory relief against Defendants, who are named in their official capacities, as well as their agents, assistants, successors, employees, and all persons acting in concert or cooperation with them or at their direction or under their control.

### **LEGAL FRAMEWORK**

21. The analysis of a claim alleging a violation of the First Amendment

right of access typically involves a two-step process. The first is to determine whether, as a general matter, there is a First Amendment right of access to a particular proceeding or document. If the answer to that question is “yes,” then the court proceeds to the second step of determining if the restrictions on access satisfy constitutional scrutiny. *See, e.g., Courthouse News Service v. Planet*, 947 F.3d at 581-589-97 (9<sup>th</sup> Cir. 2020)(discussing and applying two-step process established by *Press-Enterprise Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1(1986)).

22. The first step is resolved by applying the *Press-Enterprise* “logic” and “experience” test to civil complaints. Courts around the country have recognized that both the historical experience of public access to civil complaints and the logic behind that access establish that there is a right of access to newly filed, non-confidential civil complaints that attaches upon receipt of those complaints for filing because there has been a history of access to civil complaints and logic dictates that access is important. *See Courthouse News Service v. Schaefer*, 2 F.4th 318, 328 (4<sup>th</sup> Cir. 2021); *Courthouse News Service v. Planet*, 947 F.3d 581, 596-97 (9<sup>th</sup> Cir. 2020) and, on remand, *Courthouse News Service v. Planet*, No. CV 11-8083-DMG (FFMx), 2021 WL 1605216 at \*2 (C.D. Cal. Jan. 26, 2021); *Courthouse News Service v. Gabel*, No. 2:21-cv-000132, 2021 WL 5416650 at \*13 (D. Vt. Nov. 19, 2021); *Courthouse News Service v. Tingling*, No. 1:16 Civ. 8742

(ER), 2016 WL 8739010 at \*17 (S.D. NY Dec. 16, 2016); and *Courthouse News Service v. Jackson*, No. H-09-1844, 2009 WL 2163609, at \*5 (S.D. Tex. July 20, 2009).

23. Moreover, civil filings and complaints have historically and repeatedly been deemed open to the public and press within the Eleventh Circuit. See *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1310 (11<sup>th</sup> Cir. 2001). In *FTC v. Abbvie Products LLC*, 713 F.3d 54 (11<sup>th</sup> Cir. 2013), that Court also expounded on the logic behind access to civil complaints: “A complaint, which initiates judicial proceedings, is the very cornerstone of every case, the very architecture of the lawsuit, and access to the complaint is almost always necessary if the public is to understand a court’s decision.” *Id.* at 62.

24. The right of access attaches to new non-confidential circuit civil complaints filed to Broward County when those complaints are received by the Portal. A complaint is deemed filed once it is received at the Portal; the official filing date and time is the date and time of receipt. See Fla. R. Jud. Admin. 2.525 (f)(3); Florida *Standards for Electronic Access to the Courts* 1.2.4 Electronic Notification of Receipt.

25. Step two of the analysis involves determining whether the denial of access to new civil complaints while they sit in an electronic work queue and until a clerk completes processing is constitutional. That question has been answered

“no” most recently in *Courthouse News Service v. Gabel*, No. 2:21-cv-000132, 2021 WL 5416650 at \*13 (D. Vt. Nov. 19, 2021), which found that the processing delays there were not “justified by higher interests and narrowly tailored to advance those interests.” *Id.* at 29. The *Gabel* court enjoined the defendants from “prohibiting public access to newly filed civil complaints which have not been designated confidential by the filer until the Vermont Superior Court has completed a pre-access review process.” *Id.* at 31. The Eleventh Circuit has acknowledged the importance of the press’ ability to cover judicial proceedings contemporaneously. *See U.S. v. Ellis*, 90 F.3d 447 (11<sup>th</sup> Cir. 1996).

26. Likewise, prohibiting access to newly filed non-confidential Broward County circuit civil complaints while they sit in a review queue and until the completion of pre-access processing activities violates the First Amendment. Defendants cannot justify that such practices serve higher interests or are narrowly tailored to serve those interests because the delays are unnecessary and easily avoidable through means readily available to Defendants.

### **FACTUAL ALLEGATIONS**

#### **Courthouse News’ Reporting Activities**

27. Courthouse News is a nationwide news service, founded almost thirty years ago out of a belief that much news about civil litigation went unreported. Courthouse News employs approximately 240 people, most of them editors and

reporters who cover state and federal trial and appellate courts in all fifty states.

28. Courthouse News offers a variety of publications. It publishes a freely-available website, [www.courthousenews.com](http://www.courthousenews.com), offering news reports and commentary read by roughly 30,000 people each weekday. The website functions much like a daily newspaper, featuring staff-written articles from across the country that are posted throughout each day and rotated on and off the page on a 24-hour news cycle.

29. Among Courthouse News' other publications are two print newsletters and an electronic *Daily Brief* which covers nationwide appellate rulings, including United States Supreme Court and federal circuit decisions, as well as significant rulings from federal district courts (including the Northern District of Florida) and circuit courts of appeals (including the Eleventh Circuit).

30. In addition, Courthouse News publishes multiple *New Litigation Reports* containing original, staff-written summaries of significant new civil complaints. These reports target trial courts within specific geographic areas throughout the country.

31. Courthouse News has approximately 2,300 subscribers nationwide, including law firms, law schools, government offices, and news outlets, such as: The Associated Press, *The Atlanta Journal-Constitution*, *Austin American-Statesman*, *The Boston Globe*, BuzzFeed, CNN, *The Dallas Morning News*, *Detroit*

*Free Press*, Fox Entertainment Group, *Honolulu Civil Beat*, International Consortium of Investigative Journalists, *Los Angeles Business Journal*, *Los Angeles Times*, North Jersey Media Group, *The Salt Lake Tribune*, *Tampa Bay Business Journal*, *Variety*, *The Wall Street Journal*, Walt Disney, and Warner Bros.

32. Courthouse News employs reporters who cover Florida state and federal courts, including the Broward County Seventeenth Judicial Circuit Court.

33. Courthouse News publishes eight *New Litigation Reports* in Florida, divided by geographic regions.

34. These reports cover all three federal district courts and the state's circuit courts, including Broward County's. The reports focus on complaints involving business institutions, public entities, prominent individuals or other civil actions of interest to Courthouse News subscribers. *New Litigation Reports* do not cover criminal or family law matters, nor do they include name changes, probate filings, or most residential foreclosures.

35. Moreover, Courthouse News does not seek to review or report on the small number of newly filed civil complaints that are confidential by court rule or accompanied by a motion to determine confidentiality of court record.

36. More than 160 Florida law firms subscribe to at least one Florida report. Nova Southeastern University and the University of South Florida also



subscribe to one or more of the Florida reports. Government subscribers include the Palm Beach County School District.

37. Florida media, including *The Miami Herald*, the *Orlando Sentinel*, *The Palm Beach Post*, the *South Florida Sun Sentinel*, the *Tampa Bay Times*, Univision, WESH (Orlando), WFTS (Tampa), WFTV (Orlando), WPBF (West Palm), WTLV (Jacksonville), WTSP (Tampa), and WTVJ (Miami), have credited Courthouse News as the original reporting source for news on civil litigation matters of public interest.

38. Broward County's Seventeenth Judicial Circuit Court is covered every court day, and the *Broward County Report* about that court is e-mailed to subscribers each evening. There are 65 unique subscribers to the *Broward County Report* alone, including 34 large law firms that, combined, employ thousands of lawyers.

39. To prepare the *New Litigation* Reports and identify new cases that may warrant a website article, Courthouse News reporters have traditionally visited their assigned courts, so that they could review the new complaints to determine which ones are newsworthy. However, as the federal courts and an increasing number of state courts have made court records available online, and in light of the ongoing COVID-19 pandemic, Courthouse News also covers courts remotely through the Internet.

40. Given the nature of Courthouse News' publications, any delay in the ability of a reporter to obtain and review new complaints necessarily creates a delay in its ability to inform subscribers and the public of the factual and legal allegations in those complaints.

**Tradition of Access to Civil Complaints on Receipt for Filing**

41. It has been a long-standing tradition for the press to review new civil complaints in courts across the country right after they crossed the intake counter and before docketing, which is now often called "processing." This practice ensures that interested members of the public learn about new cases in a timely manner, while the news is still fresh.

42. The complaint is the foundational cornerstone of all civil litigation. It is the document by which the authority of a branch of government is invoked to publicly resolve what had previously been a private dispute. It sets forth the factual and legal claims and the relief sought. When a complaint is received for filing, the public – which funds the operation of the courts – is entitled to know who has invoked the jurisdiction and authority of the judicial branch and to what end. When a new complaint is withheld, the public has no way of knowing that a new civil proceeding has been initiated. Even if the existence of a case is known, without access to the complaint itself, the public has no reliable and accurate way to ascertain the factual and legal claims in the new civil action.

43. Traditionally, in paper-filing courts, a filer approached the clerk's counter and handed a new complaint to an intake clerk who completed the intake tasks associated with filing, which typically included: stamping the complaint as "filed", affixing a date, assigning a case number, and taking a check or credit card for the filing fee. Once those tasks were completed, the new complaint was set aside for press and public view, while the intake clerk turned to the next filer in line. After intake, clerks routinely put the new complaints into a bin or box near the intake window that the public and press could then look through. Florida state courts, including large courts in Miami, Orlando, Palm Beach and Tampa, provided traditional access within minutes of receipt to paper filings

44. Later, a docketing clerk, who generally worked away from the counter, gathered up the new complaints to complete the "docketing" of the new complaint, work that is now called "processing." This second set of tasks was commonly more time-consuming and included entering information into a docket form, such as parties, lawyers, addresses, the nature of the case, judge assigned, and the case number, into the court's case management system. The new complaints were then put in folders and taken either to a judge's chambers or the records room.

45. Journalists traditionally reviewed the new complaints after they were set aside by the intake clerk and before they were picked up by the docketing or

processing clerk. Complaints were thus regularly publicly accessible within minutes of their receipt, whenever the court was open for filing.

46. Many state and federal courts carried this tradition of access into the electronic filing environment, an environment that automates the intake process and which should facilitate public access to new complaints.

### **E-Filing, Clerk Work Queues & Processing Activities**

47. The Authority developed, owns, and governs the Portal at [www.myflcourtagency.com](http://www.myflcourtagency.com). With narrow exceptions, e-filing is mandatory in the state of Florida. The Portal is the authorized statewide common entry point for electronic court filings, including Circuit Court filings. In other words, all e-filed documents, including those filed in Broward County Circuit Court, flow through this common entry point. The Authority is defined by Florida clerks themselves as the entity “charged with managing the design, development, implementation, operation, upgrade, support and maintenance of the Florida Courts E-Filing Portal for the receipt and transmission of electronically filed court records.” It thus has the ability to manage the flow of new civil complaints and to send new non-confidential civil complaints into a public review queue. The Portal uses software written by a private e-filing vendor, Granicus, which also wrote the e-filing software used by Arizona’s court system that includes a public review queue.

48. Courthouse News is informed and believes that the Portal functions

essentially the same as other e-filing systems used by courts across the nation: (1) filers submit documents and proceed through multiple screens filling in required case information in order to submit an e-filing, (2) the Portal e-file manager program (“EFM”) receives these documents and the filer-provided information, (3) the Portal sorts the documents by county and delivers the documents to electronic work queues or inboxes assigned to each county’s clerk’s office, including the queue/inbox for Broward County, which are not accessible to the public, (4) the documents sit in these work queues/inboxes while they wait for clerk staff to process them, and (5) once processed, the documents migrate from the work queues/inboxes to case files in the local clerk case management system (“CMS”). The Authority could but does not provide the public or Courthouse News any access to Broward County Circuit Civil complaints through any Portal system.

49. Clerk Forman’s Office makes new circuit civil complaints publicly available only through [www.browardclerk.org](http://www.browardclerk.org), whether through computer terminals at her office or elsewhere. Non-confidential Broward Circuit Court Civil complaints, however, are not made available to the public and press until processing is completed. In the meantime, most Broward circuit civil complaints sit in a work queue awaiting Clerk Forman’s staff and are further withheld until staff completes all processing. Delays in Broward County have been pervasive.

50. Defendants’ actions, policies and practices combine to withhold

access to non-confidential civil complaints after filing, while they sit in electronic queues, sometimes for days, waiting to be administratively processed before being made public.

51. Delays in access to newly filed complaints, even of one or two days, make it less likely the complaints will be reported on by the press. As a result, coverage of newsworthy cases is diminished.

### **Broward's Delay History**

52. Courthouse News has reported on new circuit civil complaints in Broward County since at least 2003, first reporting on complaints filed in a paper environment and then, when e-filing became mandatory for attorneys in 2013, reporting on electronically filed complaints.

53. While other large courts provided traditional access within minutes of receipt to new civil complaints, access delays in Broward County have been a chronic problem. With the transition to e-filing, access delays continued to exist in Broward County, both online and at the courthouse. Most new complaints continue to be withheld from public review for at least one day and often longer post-filing, depending on the work rhythm of Clerk Forman's Office.

54. For example, in November of 2018, a Courthouse News editor physically visited Clerk Forman's Office to attempt to obtain counter access to circuit civil complaints e-filed earlier on the day of his visit. He was unable to

obtain any complaints filed that day. [*See* REPORT: Tour of Florida Courthouses to Access Court Records, dated December 10, 2018.]

55. Clerk Forman's Office later acknowledged that new complaints are rarely made publicly available on the day of filing. Responding to the tour report, Clerk Forman's Office explained its policy on when complaints should be made available to the public as "two days for case filings and three days for supplemental filings 80 percent of the time." [*See* Response of Florida Court Clerks & Comptrollers to the News Media Coalition's Report – "Tour of Florida Courthouses to Access Court Records", dated March 2019.]

56. The access blackout of Broward County complaints now typically runs between one and three days. Over the last approximately six months, Courthouse News has tracked the rate of access and found that only about 15% of the new civil complaints filed in the Seventeenth Judicial Circuit Court, Broward County, Florida are publicly available on the day of filing – while nearly one in three, or 32%, are withheld for two days or more.

57. Delays in Broward County have existed for years because that county has had a longstanding policy, which was continued by Clerk Forman, of withholding public access to complaints until processing is completed. In addition, for nearly a decade, delays were also attributed to the review and redaction obligations in Florida Rule of General Practice and Judicial Administration 2.420.

Effective July 1, 2021, however, the Florida Supreme Court amended Rule 2.420 to remove any clerk review and redaction obligations for nearly all circuit court civil filings. Nonetheless, delays persist because access is delayed while complaints sit in work queues and until the completion of processing.

58. While privacy, in broad terms, has been cited as a basis for opposing timely access, the responsibility for reviewing and redacting the new circuit civil complaints Courthouse News seeks falls squarely on filers, not clerks. The policy of placing responsibility for redaction on filers is widespread among state and federal courts.

59. Prior to commencing this action and after the effective date of the amendment to Rule 2.420, Courthouse News compiled access data for circuit court civil complaints e-filed to Broward County, noting delays between when each complaint was received for filing and when Clerk Forman’s Office first made each complaint available to the public. This chart shows the delay numbers in calendar days from filing day, for the period of July 19, 2021, through January 19, 2022:

| <b>Total Cases (All Cases)</b> |                   |                              |
|--------------------------------|-------------------|------------------------------|
| <b>Category</b>                | <b># of cases</b> | <b>Percent of Total</b>      |
| Zero Delay                     | 1302              | 14.70% zero delay            |
| One Day Delay                  | 4758              | 53.71% one day delay         |
| Two Days Delay                 | 652               | 7.36% two day delay          |
| Three Days Plus Delay          | 2146              | 24.23% three days plus delay |
| <b>Total Cases</b>             | <b>8858</b>       |                              |

60. Nearly a third of new Broward County circuit civil complaints are



withheld two to three days, with more than 85% of complaints unavailable on the day of their filing. Delays are ongoing.

61. Defendants' policies and practices of withholding access to complaints while they sit in electronic queues/inboxes and until after processing is completed denies Courthouse News – and by extension its readers and the public – access to newly filed civil complaints

62. The access delays, however, are readily avoidable. Electronic filing makes it easy for courts to provide access to new complaints within minutes of receipt. Basic intake work that was previously done by clerks at the intake counter is now done by e-filing software, which filers must use to enter case information and whatever minimum submission requirements the court specifies before submitting their electronic filings, including complaints, to the court.

63. The means to provide pre-processing access within minutes of filing to non-confidential Broward County Circuit Civil e-filed complaints are readily available to Defendants. Most federal courts and many state courts, including Arizona through the same e-filing vendor as Florida, employ technological means that permit the traditional access provided with paper filings, while allowing busy clerks to attend to clerical tasks as their schedules allow. This is true notwithstanding the COVID-19 pandemic. Despite emergency orders and courthouse closures during the pandemic, many state and federal courts across the

nation, unlike Broward County, have continued to provide access to new complaints within minutes of receipt without disruption.

### **Refusals to Provide Pre-Processing Access**

64. In a letter dated October 8, 2021, Courthouse News asked Clerk Forman to provide pre-processing access through technologically available options. Clerk Forman did not respond.

65. In a letter dated January 4, 2022, counsel for Courthouse News wrote counsel for the Authority and asked the Authority to itself provide pre-processing access through technologically available options or take all steps necessary to permit county level efforts by clerks of court to implement a pre-processing public review queue that grants public access to replicated images of non-confidential civil filings upon their receipt at the Portal.

66. Counsel for the Authority responded that this correspondence had been forwarded to Chair Rushing and that a response would not be provided until after the January 27, 2022, Authority board meeting. While Chair Rushing placed the letter on the agenda and handled the related agenda item, she merely noted a letter had been received and asked if there was any discussion before moving on with the next agenda item. The Authority has not responded to Courthouse News' requests.

67. Despite Courthouse News' efforts, Defendants continue to refuse to

provide or agree to provide timely access to e-filed, non-confidential circuit civil complaints within minutes of their filing and receipt, instead withholding such complaints until processing is completed.

### **Harm Caused by Access Delays**

68. Defendants' policies and practices of withholding access to newly filed circuit civil complaints until after administrative processing prevent Courthouse News from informing the public about new court filings in Broward County Circuit Civil Court while the news is still fresh. Indeed, delays in access undermine the benefit of public scrutiny and may have the same result as complete suppression. The newsworthiness of a new filing quickly declines with time and complaints not reported on the day of filing are often not covered at all or receive less prominent coverage. By the time the public has access to many newly filed complaints in Broward County, the news is stale after a day or two, like bread.

69. Moreover, news reports about complaints not yet available to the public are prone to inaccuracies. There is no way to inform the reader about the factual allegations or legal claims without having access to the actual complaint.

70. Thus, Defendants' conduct challenged in this action diminishes the ability of Courthouse News to report accurately and quickly on the work of the courts – while the news is still fresh. Defendants' conduct also damages the open, fundamentally public nature of the courts by impeding news coverage of new

filings. Ultimately, the no-access-before-process policy ironically takes the court backwards on transparency while moving forward on technology.

71. Here, the Defendants have alternative and easily available means to provide the constitutionally required level of access, and do not have any overriding interest in denying it. The policies and practices of delaying access to new civil petitions despite available less restrictive alternatives violates Courthouse News' First Amendment right of access, just as the policies and practices of the court clerks in *Jackson*, *Tingling*, *Planet III*, *Schaefer* and *Gabel* did. Courthouse News seeks declaratory relief and a prospective injunction prohibiting such policies and practices.

### COUNT I

#### **Violation of the First Amendment & 42 U.S.C. §1983**

72. Courthouse News incorporates the allegations contained in paragraphs 1-71 herein.

73. Defendants' actions under color of state law, including without limitation the policies and practices of withholding new non-confidential circuit court civil complaints from press and public view until after processing is completed and the resulting denial of access of those complaints, deprives Courthouse News and, by extension its readers, of their right of access to public court records secured by the First Amendment to the United States Constitution.

74. There is no compelling or overriding interest to justify Defendants' unconstitutional actions resulting in denials of on-receipt access to newly filed Broward County circuit civil complaints under the First Amendment. Even if a compelling or overriding interest did exist, there are far less restrictive means of protecting any interest. As such, Defendants' policies and practices that result in the denial of on-receipt access to newly filed circuit civil complaints are not narrowly tailored, as required by law.

75. Courthouse News has no adequate and speedy remedy at law to prevent or redress Defendants' unconstitutional actions and will suffer irreparable harm as a result of Defendants' violation of its First Amendment rights. Courthouse News is therefore entitled to declaratory relief and injunctive relief, both preliminary and permanent, to prevent further deprivation of the First Amendment rights guaranteed to it and its readers.

WHEREFORE, Courthouse News seeks the following relief:

1. A declaratory judgment pursuant to 28 U.S.C. §2201 declaring Defendants' policies and practices of knowingly withholding access to new, non-confidential circuit civil complaints for a day or days, including without limitation, the policies and practices of denying access to complaints while they sit in work queue and until the completion of administrative processing, are unconstitutional under the First and Fourteen Amendments to the United States Constitution

because these policies and practices constitute an effective denial of access to public court records;

2. A preliminary and permanent injunction against Defendants, including their agents, assistants, successors, employees, and all persons acting in concert or cooperation with them, at their direction or under their control, prohibiting them from continuing their policies and practices that deny Courthouse News access to new non-confidential circuit court civil complaints until after completion of processing;

3. An award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988; and

4. Such other relief the Court deems appropriate.

Dated: \_\_\_\_\_, 2022.

Respectfully submitted,

THOMAS & LOCICERO PL

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