

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW
YORK,

– against –

DONALD J. TRUMP,
Defendant.

Oral Argument Requested
Indictment No. 71543-23

**NON-PARTY APPLICATION
TO GRANT PUBLIC ACCESS TO DAILY TRANSCRIPTS**

Pursuant to 22 NYCRR § 131, Common Cause and New York Focus (collectively, the “Applicants”),¹ by their undersigned counsel, respectfully submit this Application requesting that the Court publish daily transcripts of proceedings on the Unified Court System webpage at the conclusion of each day the matter is heard. Alternatively, the Applicants request delayed publication of daily transcripts pursuant to the Court’s practice of a 48-hour redaction period for court filings.

PRELIMINARY STATEMENT

No proceeding in American history ever called for broader access and continuous public oversight than the trial before this Court: the prosecution Donald J. Trump, a former president and current presidential nominee, for allegedly attempting to influence an election by hiding

¹ Common Cause is a nonpartisan organization dedicated to protecting the integrity of U.S. election processes and making government at all levels more representative, open, and responsive to the interests of ordinary people. To that end, Common Cause routinely disseminates updates and news on current events relevant to its mission to its 1.2 million members who reside in all 50 states and in every congressional district. New York Focus is a nonprofit news organization that produces accountability journalism on New York state politics and policy, including extensive coverage of New York courts. As such, the Applicants function as news organizations pursuant to 22 NYCRR § 131.2.

information from voters. Since the inception of this case, the Court has acknowledged that the case has generated unparalleled public attention and media interest and that it involves “a matter of monumental significance.” Decision & Order, at 3, *People v. Trump*, No. 71543/2023 (N.Y. Sup. Ct. Apr. 3, 2023). As such, the general public “rightly hungers for the most accurate and current information available.” *Id.*

Despite the Court’s efforts to assure as much transparency as possible, a serious problem remains. Most of the nation and the rest of the world have only one source to understand the proceedings and understand the evidence that undergirds this historic prosecution: the news media. However, the media itself has been attacked as unreliable by, among others, former President Trump. As the case proceeds, millions of Americans with no ability to attend the trial will be getting second-hand accounts of it from outlets they do not trust and simply will not believe.

At the heart of the public’s constitutional right to access is promoting confidence in the justice system. The New York Code specifically seeks to “preserve public confidence in the Judiciary” by maintaining “the broadest scope of public access to the courts.” 22 NYCRR § 131.1.² The requested relief is narrow, but will fulfill this objective.

FACTUAL BACKGROUND

On April 4, 2023, the Manhattan District Attorney’s Office announced a 34-count indictment against Former President Trump for falsifying business records to interfere with the 2016 election. The charges stem from an alleged scheme by Mr. Trump in the lead up to the 2016

² 22 NYCRR § 131 explicitly authorizes the court to make determinations that guarantee the fullest extent of audiovisual coverage permitted by law. *See* 22 NYCRR § 131.1(a).

presidential election to conceal potentially damaging claims of an extramarital affair with Stephanie Clifford, the adult-film actress known as “Stormy Daniels.”³

The prosecution marks a historic moment in U.S. politics as the first criminal trial of a former president in the nation’s history. The trial, which began on April 22, 2024, and is expected to last up to eight weeks, will play out while Mr. Trump is a presidential candidate seeking a second term in the White House.

ARGUMENT

I. THE RIGHT OF ACCESS SHOULD EXTEND TO DAILY RELEASE OF PROCEEDING TRANSCRIPTS

The press and the public have a First Amendment “right of access to criminal trials.” *See Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 606 (1982). Of course, this constitutional right is not unlimited. We recognize that the Court has already been generous and proactive in its attempt to safeguard the right of access, including through use of an overflow courtroom with 114 seats. *See Media Access Notice, People v. Trump*, No. 71543/2023 (N.Y. Sup. Ct. Apr. 15, 2024). But under these unprecedented circumstances, meaningful public access demands more than accounts from the limited number of individuals who manage to secure a seat.

A. Judicial Transparency Is Paramount

Courts at all levels stress the importance of judicial transparency. *See, e.g., Globe Newspaper Co.*, 457 U.S. 596, 606 (“[P]ublic access to the criminal trial fosters an appearance of fairness, thereby heightening public respect for the judicial process.”); *Press-Enterprise Co. v.*

³ Common Cause has been at the forefront of boosting awareness and transparency in this very case. It was the first organization to alert the Department of Justice and the Federal Election Commission of the \$130,000 payment from Essential Consultants LLC to Stephanie Clifford. On January 28, 2018, Common Cause filed complaints with both agencies, alleging that the 2016 payment – through a shell company, right before the November 2016 presidential election – was an unreported and illegal in-kind contribution to the Trump campaign.

Superior Court of California, 464 U.S. 501, 508 (1984) (“The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known.”); *ABC, Inc. v. Stewart*, 360 F.3d 90, 105 (2d Cir. 2004) (“Our national experience instructs us that except in rare circumstances openness preserves, indeed, is essential to, the realization of [the right to a fair trial] and to public confidence in the administration of justice.”).

Similarly, New York’s “long-standing, sound public policy” holds that criminal and civil proceedings are presumptively open to the public. *See Matter of James Q.*, 32 N.Y.3d 671, 676 (2019). This serves multiple purposes: (1) protecting the accused from unjust persecution by public officials; (2) demonstrating to the public that justice has been served; and (3) instilling “public trust in our judicial process.” *Westchester Rockland Newspapers, Inc. v. Leggett*, 48 N.Y.2d 430, 437 (1979).

Prosecuting a current or former elected official “requires vigilance against bias and awareness about how the case will be perceived by the public.”⁴ But Mr. Trump, who also sought broad public access to this proceeding, has created an unusual Catch-22. Courts nationwide, including in this jurisdiction, entrust the press with keeping the public informed and engaged; this is key to a functioning democracy.⁵ *See Poughkeepsie Newspapers, Inc. v. Rosenblatt*, 92 A.D.2d

⁴ *See* Editorial Board, *Donald Trump and American Justice*, The New York Times (Apr. 17, 2024), available at <https://www.nytimes.com/2024/04/17/opinion/donald-trump-trial.html>.

⁵ Indeed, this reasoning is routinely cited by media organizations as grounds for courts to allocate as many courtroom seats as possible for press representatives. *See, e.g.*, Suppl. Submission in Further Support of News Orgs.’ Application to Permit Videography, Photography, & Radio Coverage of the Arraignment of Former U.S. President Donald J. Trump, *People v. Trump*, No. 71543/2023 (N.Y. Sup. Ct. Apr. 3, 2023).

232, 237 (1983), *aff'd*, 61 N.Y.2d 1005 (1984) (noting that a traditional role of the press is “informing the people of matters of public interest and concern).

Meanwhile, Mr. Trump repeatedly rebuked the press while in office, calling mainstream media “the enemy of the American people.” He has renewed allegations of inaccurate, and even fraudulent, reporting of the news ever since. Moreover, Mr. Trump singled out a handful of outlets and individual reporters during these attacks—many, if not all, of which are covering his trial.⁶

In this moment of political absolutism and polarization, mere months away from a consequential presidential election, full transparency and public trust in the system is of paramount importance. “Openness” should enhance not only the basic fairness of the criminal trial but also “the appearance of fairness so essential to public confidence in the system.” *Press Enter. I*, 464 U.S. at 508. Here, daily publication of transcripts would offer the public meaningful access and an unvarnished account of the trial without editorialization or the perception of being right- or left-leaning.

B. Courts Consider Unique Requests To Ensure The Right To Meaningful Access Is Met

Courts throughout the country consider atypical public access processes when presented with exceptional circumstances. For example, the 2020 murder of George Floyd by former Minneapolis Police Officer Derek Chauvin sparked intense media and public attention. At his state criminal trial, the court recognized that even with overflow courtrooms, the demand by the public and the press to attend the trial would “outstrip the court’s ability to provide *meaningful*

⁶ These include but are not limited to: ABC News, CBS News, CNN, NBC News, The New York Times, and The Washington Post. These outlets were all among the limited group of publications included in the jury selection pool group.

access.” Order Allowing A/V Coverage of Trial, *Minnesota v. Chauvin*, 27-CR-20-12646 (Minn. Dist. Ct. Nov. 4, 2020) (emphasis added). Citing the unique situation and the crucial need for public confidence in the justice system, the Court permitted audiovisual coverage, notwithstanding Minnesota’s general prohibition against courtroom broadcasts. *Id.* (“This Court concludes that the only way to vindicate the Defendants’ constitutional right to a public trial and the media’s and public’s constitutional right of access to criminal trials is to allow audio and video coverage of the trial.”).

Already, the Court has taken up new measures to account for the unusual situation presented by Mr. Trump’s prosecution: it posts all substantive pleadings, decisions and orders on the court website, an atypical step in New York State criminal matters. *See Decision & Order, People v. Trump*, No. 71543/2023 (N.Y. Sup. Ct. Mar. 26, 2024). The relief we seek is far narrower, yet it would enhance public understanding of both the unprecedented proceedings and the judicial process. As the Supreme Court held half a century ago, “[w]hat transpires in the courtroom is public property.” *Craig v. Harney*, 331 U.S. 367, 374 (1947). Here, the parties and at least a dozen media outlets receive paid-for daily copies. Publishing transcripts of the court proceedings would not cause additional work for the Court or the court reporters. But posting them online for public review would significantly increase the public’s access, enhance confidence in the court system, and serve as a bulwark against mis- and dis-information about the fairness of the proceedings to all litigants. *See also id.*

CONCLUSION

Recognizing the historic importance of this case and the physical limitations on the public to accessing the court, the Applicants respectfully request that the Court grant the limited relief

sought. Additionally, the Applicants would appreciate the opportunity, at the court's discretion, to be heard by argument.

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Respectfully submitted,

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Court File