No. 18-404

IN THE
Supreme Court of the United States

THE COLORADO INDEPENDENT,
Petitioner,

v.

DISTRICT COURT FOR THE EIGHTEENTH JUDICIAL DISTRICT OF COLORADO,
Respondent.

On Petition for a Writ of Certiorari to the Colorado Supreme Court

BRIEF OF *AMICI CURIAE* CONSTITUTIONAL LAW SCHOLARS IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the public's qualified First Amendment right of access defined by this Court in a series of cases culminating in *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986), apply to the substantive motion papers, hearing transcripts, and court orders filed in a capital murder prosecution?

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INTERESTS OF *AMICI CURIAE*

Amici are scholars specializing in constitutional law. These scholars are all dedicated to the study of the freedoms guaranteed by the First Amendment and have educated students and published articles on the subject. A list of the individual scholars is set out in the Appendix.[1]

The interest of *amici* in this case is to ensure that the press and the public preserve their First Amendment right of access to judicial records, such as motion papers, hearing transcripts, and court orders, produced in the course of criminal proceedings. Public access to judicial documents both ensures the proper functioning of the judicial system through accountability and upholds civic values by promoting understanding and trust in the judiciary. The legitimacy and transparency of criminal proceedings is of paramount importance to the press, whose institutional role is to serve as a watchdog and check on government.

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[1] The parties received timely notice of and have consented to this brief. Pursuant to S. Ct. Rule 37.6, counsel for petitioner David A. Schulz is co-director of the Media Freedom and Information Access Clinic and participated in the drafting of this brief. No party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than the amici curiae, its members or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The decision of the Colorado Supreme Court warrants review and prompt reversal. *In re People v. Owens*, 420 P.3d 257 (Colo. 2018). The constitutional access right rejected by the court below both promotes the proper functioning of the courts and assures the public that those courts are carrying out justice. In a quartet of cases beginning with *Richmond Newspapers*, this Court upheld a First Amendment right of access to attend criminal proceedings. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) (*Press-Enterprise I*); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (*Press-Enterprise II*). In so doing, this Court repeatedly stressed the significant role public access plays in the functioning of the judicial system. Given the functional value of public access, every circuit court and state high court to have addressed the issue has recognized, with unanimity until now, that the same constitutional access right applies to the types of judicial records at issue here: substantive motion papers, hearing transcripts, and judicial orders. None has held—as the Colorado Supreme Court surprisingly did—that the constitutional right of access applies only to entering courtrooms, and never to any judicial records.

Access to judicial records of criminal proceedings is as vital to their proper functioning as access to the live proceedings themselves. For instance, many procedural determinations are made and executed entirely through documents with no actual in-court

proceeding. Moreover, even when proceedings are held, news organizations today largely rely on public judicial records in their reporting, due to financial and time constraints involved in sending reporters to attend proceedings. Public access to court records bolsters the propriety of proceedings and improves the accuracy of fact-finding. Access further enhances the public's trust in and understanding of the judicial process. With its *Colorado Independent* decision, the Colorado Supreme Court has upended what had become well-accepted law. It has undermined both the letter and spirit of this Court's precedent, as well as the ability of the public and the press to identify judicial malfunction.

Despite impressive near-unanimity that the types of records denied to the *Colorado Independent* are subject to the First Amendment access right, some uncertainty and contradiction remains among appellate courts about which *other* types of records are subject to a qualified constitutional right of access, as well as the proper approach to determining where the right exists. Review by this Court of the Colorado ruling would provide needed guidance to the lower courts about the proper scope and application of the First Amendment access right.

REASONS FOR GRANTING THE PETITION

I. THE COLORADO SUPREME COURT HAS DECIDED AN IMPORTANT FEDERAL CONSTITUTIONAL QUESTION IN A WAY THAT WILL UNDERMINE THE PROPER FUNCTIONING OF THE COURTS AND ERODE PUBLIC CONFIDENCE IN THEM

A. Public access to judicial documents exposes and reduces malfunctions in the judicial process.

The constitutional access right at stake in this Petition is key to the proper functioning of the judicial system. A long history of openness in the Anglo-American justice system has served to "discourage[] perjury, the misconduct of participants, or decisions based on secret bias or partiality." *Richmond Newspapers,* 448 U.S. at 569. When it first addressed whether public access to the courts serves sufficiently important functions to warrant Constitutional protection, this Court agreed with Jeremy Bentham: "Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account." *Id.* This rationale remains as true as ever, even as the administration of justice has evolved. Today, judicial proceedings rely on a written record and are often resolved without live proceedings.

Transparency safeguards the fairness of criminal trials by ensuring that justice is administered according to established procedures and rules. In *Press-Enterprise I*, the Court recognized that "the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being

followed and that deviations will become known." 464 U.S. at 508. Lower courts have widely recognized the value of judicial documents in helping the public assess the propriety of court conduct. Public monitoring "fosters the important values of quality, honesty and respect for our legal system." *In re Providence Journal Co.*, 293 F.3d 1 (1st Cir. 2002) (citation and internal quotation marks omitted) (finding a right of access to legal memoranda submitted to the court). Conversely, secrecy threatens the functionality of the judicial process, for example, by "masking impropriety, obscuring incompetence, and concealing corruption." *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983) (finding a right of access to judicial proceedings and documents in civil cases).

This Court has also recognized the important role that publicity serves in ensuring true and accurate factfinding at trial. *Richmond Newspapers*, 448 U.S. at 596. Through access to judicial records such as decisions, transcripts of trials, hearings, and arguments, and evidence submitted to judges, the public can monitor and assess the "source of evidence admitted at trial and the circumstances of its admittance," which are "crucial to an assessment of the fairness and the integrity of the judicial proceedings." *United States v. Ladd*, 218 F.3d 701, 704 (7th Cir. 2000) (holding that the "public presumptively has a right of access to the records of judicial proceedings"). In light of the social costs incurred by judgments reached through mistakes of fact, the precision of the factfinding process, bolstered by the public's ability to monitor and inspect court records, is of paramount public concern.

Openness not only enhances the propriety of the judicial process but also encourages the integrity of the actors. The circuit courts have held that "[p]ublic scrutiny over the court system serves to . . . provide a check on the activities of judges and litigants." *Grove Fresh Distribs., Inc. v. Everfresh Juice Co*., 24 F.3d 893, 897 (7th Cir. 1994) (upholding a First Amendment right of access to documents filed in civil suits). Records of judicial proceedings are also subject to the First Amendment right of access because they may "reveal potential judicial biases or conflicts of interest." *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 95 (2d Cir. 2004) (recognizing a First Amendment right of access to sealed docket sheets and case files). The Sixth Circuit specifically recognized a right of access to motions and affidavits of bias against a judge, because "[w]hen a judge's impartiality is questioned, it strengthens the judicial process for the public to be informed of how the issue is approached and decided." *Applications of Nat'l Broad. Co*., 828 F.2d 340, 344-45 (6th Cir. 1987). This Court has explicitly upheld a privilege for reporting truthful information about judicial misconduct proceedings precisely because "the operations of the courts and the judicial conduct of judges are matters of utmost public concern." *Landmark Commc'ns v. Virginia*, 435 U.S. 829, 839 (1978).

Public access to judicial records promotes prosecutorial integrity for the same reasons. This Court hailed a responsible press as "the handmaiden of effective administration," for the "press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive

public scrutiny and criticism." *Landmark Commc'ns*, 435 U.S. at 839 (citing *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966)). Lower courts have applied the First Amendment right to access to documents pertaining to sentencings and plea hearings, settings in which prosecutors wield significant influence, to discourage prosecutors from acting arbitrarily or wrongfully. *See, e.g.*, *Oregonian Publ'g Co. v. U.S. Dist. Court*, 920 F.2d 1462 (9th Cir. 1990); *United States v. Soussoudis (In re Wash. Post Co.)*, 807 F.2d 383 (4th Cir. 1986); *CBS Inc. v. U.S. Dist. Court*, 765 F.2d 823 (9th Cir. 1985); *United States v. Santarelli*, 729 F.2d 1388 (11th Cir. 1984). Public scrutiny "operates to check any temptation that might be felt by either the prosecutor or the court to obtain a guilty plea by coercion or trick, or to seek or impose an arbitrary or disproportionate sentence." *In re Wash. Post Co.*, 807 F.2d at 389.

B. Public access to judicial documents improves the public's understanding of the justice system and bolsters public confidence in the courts.

Public access to court records does more than enhance the proper functioning of the judicial process; it also fosters public support for the criminal justice system. This Court has long recognized that "the means used to achieve justice must have the support derived from public acceptance of both the process and its results." *Richmond Newspapers*, 448 U.S. at 571.

Criminal trials (and the pre- and post-trial proceedings that accompany them) are not isolated acts of justice—they are part of an institution whose legitimacy depends on dialogue with the greater

community. In a broad democratic sense, the public is a key participant in the judicial process itself. As this Court noted in *Globe Newspaper*, "an essential component in our structure of self-government" is that citizens "participate in and serve as a check upon the judicial process." 457 U.S. at 606. A properly functioning justice system requires that the public understand the ways in which courts operate, so that the "constitutionally protected 'discussion of governmental affairs' is an informed one." *Id.* at 605 (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). Only through a sufficiently informed public discourse on judicial functioning can the public legitimate the judicial system and criminal trials.

Public comprehension of judicial methods is impossible without access to the underlying records of cases. Judicial documents explain and provide critical context to a court's actions. The circuit courts have acknowledged this logic in a variety of contexts. The Eighth Circuit recognized a First Amendment right to view affidavits in support of a search warrant because such materials are "important to the public's understanding of the function and operation of the judicial process and the criminal justice system." *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 573 (8th Cir. 1988). Likewise, the Ninth Circuit characterized the right to access pretrial proceedings and the right to access pretrial documents as nearly one and the same since the documents themselves "are often important to a full understanding of the way in which 'the judicial process and the government as a whole' are functioning." *Associated Press v. U.S. Dist. Court*, 705 F.2d 1143, 1145 (9th Cir. 1983) (quoting *Globe*

Newspaper, 457 U.S. at 606). The Third Circuit has reasoned similarly. "Although those cases [*Richmond Newspapers*, *Globe Newspaper*, and *Press-Enterprise I*] concerned access to judicial proceedings, no reason occurs to us why their analysis does not apply as well to judicial documents." *United States v. Smith*, 776 F.2d 1104, 1112 (3d Cir. 1985).

To the extent that many judicial procedures occur *solely* through written documents, public access to these documents—as sanctioned in the *Richmond Newspapers*, *Globe Newspaper*, and *Press-Enterprise I* and *II* quartet—is even more critical. For instance, lower courts have widely recognized a right of access to the questionnaires used in jury selection because there "is no principled reason to distinguish written questions from oral questions for purposes of the First Amendment right of public access." *In re Jury Questionnaires*, 37 A.3d 879, 885-86 (D.C. 2012) (listing nine similar decisions from federal and state courts). Similarly, the Second Circuit has pointed out that "access to written documents filed in connection with pretrial motions is particularly important in the situation . . . where no hearing is held and the court's ruling is based solely upon the motion papers." *United States v. Biaggi (In re N.Y. Times Co.)*, 828 F.2d 110, 114 (2d Cir. 1987) (upholding a First Amendment right of access to pretrial motion documents).

Beyond illuminating the logic of an individual trial, access to court documents also promotes understanding of the justice system at large. In recognizing a First Amendment right of access to docket sheets, the Second Circuit emphasized the valuable general information that the public could

glean from these judicial records. "By inspecting materials like docket sheets, the public can discern the prevalence of certain types of cases, the nature of the parties to particular kinds of actions, information about the settlement rates in different areas of law, and the types of materials that are likely to be sealed." *Hartford Courant Co.*, 380 F.3d at 95-96. The Sixth Circuit found a significant First Amendment interest in unsealing documents in support of a motion to disqualify a judge because the courts benefit when the public understands the "seriousness with which the Sixth Amendment right to counsel is treated and of the meticulous inquiries that are undertaken by the court." *Applications of Nat'l Broad. Co.*, 828 F.2d at 345.

An additional compelling benefit provided by accessibility of judicial records as it exists in courts other than Colorado's is the facilitation of legal scholarship by professors, such as *amici*. As a result of the access quartet and the progeny of those cases, legal scholars perform detailed and systemic analyses of sentencing disparities and charging decisions by judicial district, race of defendant, the size of jury damage awards in copyright cases, the effect of heightened pleading standards, and a myriad of other research topics that access rights make possible. *See, e.g.*, David S. Ardia & Anne Klinefelter, *Privacy and Court Records: An Empirical Study*, 30 BERKELEY TECH. L.J. 1807 (2015) (quantifying the amount of sensitive personal information contained in briefs to a state supreme court); William H.J. Hubbard, *The Effects of* Twombly *and* Iqbal, 14 J. EMPIRICAL LEGAL STUD. 474 (2017) (analyzing the effect of pleading standards on pro se

and represented litigants); David B. Mustard, *Racial, Ethnic, and Gender Disparities in Sentencing: Evidence from the U.S. Federal Courts*, 44 J.L. & ECON. 285 (2001) (showing that departures from sentencing guidelines produced most of the racial and gender disparities in federal court sentencing); Bernardo S. Silveira, *Bargaining With Asymmetric Information: An Empirical Study of Plea Negotiations*, 85 ECONOMETRICA 419 (2017) (using data on plea bargains in state court to estimate the impact of different sentencing reforms). The academic work of many scholars and their associated recommendations for legal reforms depend squarely—and in many instances entirely—on their ability to review and analyze all types of judicial documents.

Providing access to judicial documents helps citizens better understand their courts, cementing the public's faith in the justice system. "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers*, 448 U.S. at 572. Several circuits have echoed the importance of open records as a way to "promote community respect for the rule of law," *Grove Fresh Distribs.*, 24 F.3d at 897 (extending the First Amendment right of access to documents filed in civil suits), and to ensure "respect for our legal system," *In re Cont'l Ill. Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984).

These are crucial democratic values. The justice system serves not only individuals, but the community at large. "[P]ublic proceedings vindicate the concerns of the victims and the community in

knowing that offenders are being brought to account for their criminal conduct by jurors fairly and openly selected." *Press-Enterprise I*, 464 U.S. at 509. This essential function of the justice system requires public access to judicial records. Communities cannot have faith in their courts unless they are able to read the documents that illuminate how justice operates.

Simply put, certiorari should be granted in this case because the constitutional access right rejected by the Colorado Supreme Court is key to both the proper functioning of the judicial system and public acceptance of judicial outcomes. The proper scope and application of this right should be settled by this Court.

II. LINGERING UNCERTAINTY AMONG THE LOWER COURTS ABOUT THE PROPER APPLICATION OF THE FIRST AMENDMENT ACCESS RIGHT TO JUDICIAL RECORDS ALSO SUGGESTS THE NEED FOR REVIEW

While the circuits and other state courts have uniformly rejected the view that the constitutional access right applies only to attendance at open court hearings, there is some continuing uncertainty and disagreement about the proper test for determining where the right applies. To be clear, the judicial records denied to the *Colorado Independent* fall squarely within the qualified First Amendment access right, but the reasoning by which this Court arrives at that conclusion will provide valuable guidance on the scope and application of the access right.

Federal and state courts applying the *Press-Enterprise* "experience and logic" test to various types of judicial records have reached different conclusions. For example, in applying that test, both the Second and Eleventh Circuit Courts of Appeal have held that the access right applies to Criminal Justice Act vouchers filed with the court following a verdict. *See United States v. Ellis*, 90 F.3d 447, 450-51 (11th Cir. 1996); *United States v. Suarez*, 880 F.2d 626, 631 (2d Cir. 1989). Applying that same test, the First Circuit and the Tenth Circuit have held that the access right does not apply to Criminal Justice Act vouchers post-verdict. *United States v. Connolly (In re Bos. Herald, Inc.)*, 321 F.3d 174, 182-90 (1st Cir. 2003); *United States v. Gonzales*, 150 F.3d 1246, 1254-61 (10th Cir. 1998).

Similar conflicts have arisen between the circuits concerning other judicial records in criminal case files. *Compare United States v. Smith*, 776 F.2d 1104 (3d Cir. 1985) (holding the First Amendment access right attaches to bill of particulars), *with United States v. Anderson*, 799 F.2d 1438 (11th Cir. 1986) (holding the opposite); *compare Wash. Post v. Robinson*, 935 F.2d 282 (D.C. Cir. 1991), *and Oregonian Publ'g Co. v. U.S. Dist. Court*, 920 F.2d 1462 (9th Cir. 1990) (holding the First Amendment right of access attaches to filed plea agreements), *with United States v. Connolly (In re Bos. Herald)*, 321 F.3d at 174, *and United States v. El-Sayegh*, 131 F.3d 158 (D.C. Cir. 1997) (holding the opposite); *compare In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 572-75 (8th Cir. 1988) (holding the First Amendment right of access attaches to probable cause affidavits filed with returns of executed warrant), *with*

Indianapolis Star v. United States (In re Search of Fair Fin.), 692 F.3d 424, 430-33 (6th Cir. 2012) (holding no First Amendment right attaches to documents filed in search warrant proceedings), *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 64-65 (4th Cir. 1989) (same), *and Times Mirror Co. v. United States*, 873 F.2d 1210, 1213-19 (9th Cir. 1989) (holding no First Amendment right of access attaches to search warrants and supporting affidavits during pre-indictment investigation); *compare CBS Inc. v. U.S. Dist. Court*, 765 F.2d 823 (9th Cir. 1985) (holding First Amendment right of access attaches to sentencing records), *with United States v. Corbitt*, 879 F.2d 224 (7th Cir. 1989) (holding the opposite).

Underlying these conflicting outcomes is an ongoing uncertainty about what the "experience and logic" test requires—an uncertainty that this case could clarify. For example, some courts have found a right of access almost entirely based on a history of access. *E.g., United States v. Smith*, 776 F.2d 1104, 1112 (3d Cir. 1985) (emphasizing the "historic tradition of public access to the charging document"); *United States v. Peters*, 754 F.2d 753, 763 (7th Cir. 1985) (holding that the "longstanding common law right of access to judicial records" is "of constitutional magnitude"). Others have found a right of access based exclusively on the logic of access, even where there is little or no history of access. *E.g., Whiteland Woods, L.P. v. Twp. of W. Whiteland*, 193 F.3d 177 (3d Cir. 1999) (finding a right of access to local zoning meetings); *United States v. Suarez*, 880 F.2d at 631 (finding right of access to Criminal Justice Act forms despite "lack of tradition"); *Seattle Times Co. v. U.S. Dist. Court*, 845 F.2d 1513, 1516 (9th Cir. 1988)

(finding right of access to pretrial detention hearings despite absence of "unbroken history of public access"); *see also* David S. Ardia, *Court Transparency and the First Amendment,* 38 CARDOZO L. REV. 835, 858 (2017) (discussing confusion among the courts about the "experience and logic" test).

There is similarly a lingering uncertainty about whether the "experience and logic" test needs to be separately applied to records of a proceeding if that proceeding itself is subject to the First Amendment access right. Many courts have concluded from the holdings in the *Press-Enterprise* cases that the First Amendment protects access to judicial records that are "derived from or a necessary corollary of the capacity to attend the relevant proceedings." *Hartford Courant Co.*, 380 F.3d at 93. *See, e.g.*, *United States v. Antar*, 38 F.3d 1348 (3d. Cir. 1994) (voir dire transcripts); *In re N.Y. Times Co.*, 828 F.2d 110 (2d Cir. 1987 (sealed motion papers); *In re Wash. Post Co.*, 807 F.2d 383 (documents filed in connection with plea and sentencing hearings); *United States v. Santarelli*, 729 F.2d 1388 (11th Cir. 1984) (admitted evidence in a public sentencing hearing). Other courts instead continue to apply the "experience and logic" test directly to the type of record for which access is sought, sometimes even when they relate to a proceeding that is subject to the access right. *See, e.g., Grove Fresh Distribs., v. Everfresh Juice Co.*, 24 F.3d 893 (7th Cir. 1994) (documents filed in civil suits); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d at 573 (search warrants); *Associated Press v. U.S. Dist. Court*, 705 F.2d 1143, 1145 (9th Cir. 1983) (documents filed in pretrial hearings).

The need for clarification over how the existence of a First Amendment access right to judicial records is to be determined was recently on full display in *Dhiab v. Trump*, 852 F.3d 1087 (D.C. Cir. 2017), in which members of the press sought access to videotape recordings of the forced feeding of a Guantanamo Bay detainee that were submitted, under seal, as exhibits to a motion for a preliminary injunction in an ongoing *habeas* proceeding. Although all three panel judges agreed with the government that the recordings could remain under seal for national security reasons, none could agree on the proper application of the First Amendment right to the records at issue in that case.

Judge Randolph concluded that record evidence in a *habeas* proceeding was not subject to the access right because there was no tradition of public access to *habeas* proceedings dating back millennia, in contrast to the tradition identified in *Richmond Newspapers*. 852 F.3d at 1093-94. He also considered the relevant experience under the "experience and logic" test to be the history of access for the type of *habeas* proceedings created for Guantanamo detainees, which routinely involve sealed records, and he saw no "logic" to providing a presumption of access to secret national security information filed in court during the pendency of a petition for a writ of *habeas corpus*. *Id.* at 1096.

Judge Rogers explicitly disagreed on the application of both prongs. She found the experience prong satisfied by the tradition of open *habeas* proceedings since the Nineteenth Century, 852 F.3d at 1099-1100 (Rogers, J.,

concurring), and the logic prong satisfied by considering the value of access to evidence in such proceedings generally. *Id.* at 1101-02. She disagreed that the logic prong should be applied to the classified content of the specific evidence at issue. *Id.* at 1102.

Judge Williams found the "experience and logic" test so vague that he could not determine how it should be applied to the facts presented. He found no clarity in this Court's precedent about whether the test should be applied to the "types of documents" at issue or focus instead on the type of "proceedings" to which they relate. *Id.* at 1104 (Williams, J., concurring in part and concurring in judgment). Nor could he discern how long a "tradition of public access" must be to satisfy the "experience" prong of the test. *Id.* at 1106. The "lack of guidance" from this Court led to confusion about the level of granularity at which the test should be applied: "[i]f proceedings are the subject of analysis, the likely categories here may range among civil actions generally, *habeas* actions, *habeas* actions relating to conditions of confinement, and finally, *habeas* actions related to Guantanamo." *Id.* at 1104.

Review is therefore warranted to clarify the proper scope and application of the First Amendment access right to the records of judicial proceedings.

CONCLUSION

For all the foregoing reasons, the Court should grant the writ of certiorari.

Respectfully submitted,

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APPENDIX

The amici are legal scholars specializing in constitutional law and specifically the First Amendment. They have substantial expertise in issues directly affected by the outcome in this case. These amici are listed below. Institutional affiliations are listed for identification purposes only.

- Jack M. Balkin, Knight Professor of Constitutional Law and the First Amendment, Yale Law School.

- Lee C. Bollinger, Seth Low Professor of the University, President of Columbia University.

- Erwin Chemerinsky, Jesse H. Choper Distinguished Professor of Law, Dean of University of California, Berkeley, School of Law.

- Margot Kaminski, Associate Professor of Law, University of Colorado Law School.

- Jonathan Manes, Assistant Clinical Professor, Director of the Civil Liberties and Transparency Clinic, University at Buffalo School of Law.