

Supreme Court of the State of New York
Appellate Division: Third Judicial Department

In the Matter of the Application of CAMPAIGN
FOR ACCOUNTABILITY,

Petitioner,

For a Judgment Pursuant to Judiciary Law § 90(10)
to Unseal an Attorney Disciplinary Proceeding,

- against -

GRIEVANCE COMMITTEE FOR THE THIRD
JUDICIAL DEPARTMENT, JOHN A. SARCONI
III,

Respondents.

**NOTICE OF MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

PLEASE TAKE NOTICE that, pursuant to the attached Affirmation of Sarah Park and the proposed brief of *amici curiae*, dated August 24, 2026, Advance Publications, Inc., The Associated Press, Dow Jones & Company, Inc., USA TODAY Co., Inc., Hearst Corporation, The New York News Publishers Association, The New York Times Company, and Pro Publica, Inc. will move this Court at the Robert Abrams Building for Law and Justice, Albany, New York 12223 on September 14, 2026 at 10:00am, or as soon thereafter as counsel may be heard, for an order granting this motion for leave pursuant to this Court's Rule of Practice 1250.4(f) to appear as *amici curiae* in the above-captioned case and file

the proposed *amici curiae* brief in support of the Petitioner. A copy of the proposed brief is attached.

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least two days before the return date of this motion.

Dated: August 25, 2026
New York, NY

Respectfully submitted,



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In the Matter of the Application of CAMPAIGN
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GRIEVANCE COMMITTEE FOR THE THIRD
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**AFFIRMATION IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF
OF *AMICI CURIAE* IN SUPPORT OF PETITIONER**

Sarah Park, an attorney duly licensed to practice law in the Courts of the State of New York, hereby sets forth the following propositions of law and affirms the following facts under penalty of perjury, except as to those matters stated upon information and belief. As to those matters, I believe them to be true based upon my review of the record in this case.

1. I am Senior Counsel with the Hearst Office of General Counsel, attorneys for proposed *amici curiae* herein.

2. I make this affirmation in support of a motion for leave to file an *amici curiae* brief on behalf of Advance Publications, Inc., The Associated Press, Dow Jones & Company, Inc., USA TODAY Co., Inc., Hearst Corporation, The

New York News Publishers Association, The New York Times Company, and Pro Publica, Inc. in support of Petitioner. A copy of the proposed *amici* brief is attached as Exhibit A.

3. This Court permits parties seeking to serve as *amici curiae* to file a motion for permission to serve and file an amicus curiae brief, made pursuant to 22 NYCRR § 1250.4(f).

4. *Amici* Advance Publications, Inc., The Associated Press, Dow Jones & Company, Inc., USA TODAY Co., Inc., Hearst Corporation, The New York Times Company, Pro Publica, Inc. are seven news organizations that gather and report news in New York. *Amicus* The New York News Publishers Association is an association of daily and weekly newspaper publishers whose members cover the news across this State.

5. *Amici* propose to submit a brief in support Petitioner's constitutional challenge to Judiciary Law § 90(10). By cloaking the judicial process governing attorney discipline in secrecy, Section 90(10) on its face violates the First Amendment's guarantee of presumed public access to judicial proceedings. As a necessary consequence, the law harms the ability of news organizations to inform the public on matters of significant public interest, including the misconduct of prosecutors. *Amici* therefore have a substantial interest in supporting the

constitutional basis of the Petition pursuant to well-settled First Amendment principles.

6. The proposed brief of *amici* explains that the constitutional right of access to attorney disciplinary proceedings follows from the well-established First Amendment right of access to civil and criminal judicial proceedings. The constitutional “experience and logic” test to determine whether a presumption of access applies to a given proceeding strongly favors access to judicial attorney grievance proceedings, which have a centuries-long tradition of openness. Indiscriminate closure of such proceedings under Section 90(10) breaches the public’s right of access and the press’s right to report on matters of significant public interest.

Dated: August 25, 2026

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sarah A. Park". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Sarah Park

EXHIBIT A

Supreme Court of the State of New York
Appellate Division: Third Judicial Department

In the Matter of the Application of CAMPAIGN
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Respondents.

**BRIEF OF *AMICI CURIAE* ADVANCE PUBLICATIONS, INC., THE
ASSOCIATED PRESS, DOW JONES & COMPANY, INC., USA TODAY
CO., INC., HEARST CORPORATION, THE NEW YORK NEWS
PUBLISHERS ASSOCIATION, THE NEW YORK TIMES COMPANY,
AND PRO PUBLICA, INC. IN SUPPORT OF PETITIONER**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to N.Y. Comp. Codes R. & Regs. tit. 22, § 500.1(f), *amici* certify as follows:

Advance Publications, Inc.

Advance Publications, Inc. is a privately held company and no publicly held corporation owns 10% or more of Advance Publications, Inc.

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The Associated Press has no parents, subsidiaries, or affiliates that have any outstanding securities in the hands of the public, has no publicly held stock, and no publicly held company owns 10% or more of its stock.

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Dow Jones & Company, Inc. (“Dow Jones”) is an indirect subsidiary of News Corporation, a publicly held company. Ruby Newco, LLC, an indirect subsidiary of News Corporation and a non-publicly held company, is the direct parent of Dow Jones. News Preferred Holdings, Inc., a subsidiary of News Corporation, is the direct parent of Ruby Newco, LLC. No publicly traded corporation currently owns ten percent or more of the stock of Dow Jones.

USA TODAY Co., Inc.

USA TODAY Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company holds 10% or more of its stock.

Hearst Corporation

Hearst Corporation is a privately held company, and no publicly held corporation owns 10% or more of its stock.

New York News Publishers Association

The New York News Publishers Association has no parents, subsidiaries, or affiliates that have any outstanding securities in the hands of the public, has no publicly held stock, and no publicly held company owns 10% or more of its stock

The New York Times Company

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

Pro Publica, Inc.

Pro Publica, Inc. is a Delaware not-for-profit organized under § 501(c)(3) of the Internal Revenue Code. It has no parents, subsidiaries, or affiliates that have any outstanding securities in the hands of the public, has no publicly held stock, and no publicly held company owns 10% or more of its stock.

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INTEREST OF *AMICI CURIAE*

Amici Advance Publications, Inc., The Associated Press, Dow Jones & Company, Inc., USA TODAY Co., Inc., Hearst Corporation, The New York Times Company, Pro Publica, Inc. are seven news organizations that gather and report news in New York. *Amicus* The New York News Publishers Association is an association of daily and weekly newspaper publishers whose members cover the news across this State.¹

Amici support Petitioner's argument that good cause exists under Judiciary Law § 90(10) to release the files relating to Mr. Sarcone but write separately to emphasize the serious First Amendment concerns with Section 90(10). By cloaking the judicial process governing attorney discipline in secrecy, Section 90(10) on its face violates the First Amendment's guarantee of presumed public access to judicial proceedings. As a necessary consequence, the law harms the ability of news organizations to inform the public on matters of significant public interest, including the misconduct of prosecutors. By its terms, Section 90(10) keeps reporters and the public in the dark even as to the existence of substantiated complaints against prosecutors or other attorneys charged with the responsibility of representing the public as officers of the court. *Amici* have a substantial interest in

¹ A complete identification of *amici* is provided in the Addendum to this brief.

supporting the constitutional basis of the Petition pursuant to well-settled First Amendment principles.

ARGUMENT

The constitutional right of access to attorney disciplinary proceedings follows from the well-established First Amendment right of access to civil and criminal judicial proceedings. The constitutional “experience and logic” test to determine whether a presumption of access applies to a given proceeding strongly favors access to judicial attorney grievance proceedings, which have a centuries-long tradition of openness. Indiscriminate closure of such proceedings, as required by Section 90(10), breaches the public’s right of access and the press’s right to report on matters of significant public interest.

I. The First Amendment Protects the Public’s Right to Access Judicial Proceedings.

The Supreme Court first recognized a First Amendment right of public access to criminal trials in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), a case involving a trial that was closed pursuant to a statute granting the judge discretion to do so. Chief Justice Burger, writing for the plurality, summarized the long history of Anglo-American justice thus: “[T]hroughout its evolution, the trial has been open to all who care to observe.” *Id.* at 564. The right of access to judicial proceedings is accordingly secured by ample historical precedent and “assured by the amalgam of the First Amendment guarantees of

speech and press.” *Id.* at 577–78. Freedom to speak requires freedom to listen, and “[i]n guaranteeing freedoms such as those of speech and press, the First Amendment can be read as protecting the right of everyone to attend trials so as to give meaning to those explicit guarantees.” *Id.* at 575; *see also id.* at 576–77 (“The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily.”).

The Supreme Court expanded upon the constitutional right of access to judicial proceedings in cases following *Richmond Newspapers* and elaborated the “experience and logic” test, pursuant to which courts must consider “whether the place and process have historically been open to the press and general public” and “whether public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enter. Co. v. Super. Ct.* (“*Press-Enter. II*”), 478 U.S. 1, 8, 9 (1986) (finding right of access to preliminary hearings in a criminal prosecution); *see also Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 610–11 (1982) (finding unconstitutional a statute automatically closing certain criminal trials); *Press-Enter. Co. v. Super. Ct.* (“*Press-Enter. I*”), 464 U.S. 501, 505 (1984) (finding right of access to *voir dire* proceedings).

The experience and logic test has since been routinely applied to find a First Amendment right of access to both judicial proceedings and their related records.

See, e.g., In re Demetriades, 58 F.4th 37, 45–46 (2d Cir. 2023) (recognizing right of access to judicial opinions and other judicial documents); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 124 (2d Cir. 2006) (right of access to motion papers in civil litigation); *Westmoreland v. CBS, Inc.*, 752 F.2d 16, 23 (2d Cir. 1984) (“[T]he First Amendment does secure to the public and to the press a right of access to civil proceedings . . .”).

Courts have upheld this constitutional right of access even where a specific aspect of proceedings or category of records lacks a long “tradition of accessibility”; the “principles” from *Press-Enterprise II* and related cases apply broadly to protect the public’s interest in the administration of justice and in documents submitted in connection with all manner of proceedings and records. *United States v. Suarez*, 880 F.2d 626, 630–31 (2d Cir. 1989) (right of access to CJA forms); *see also, e.g., Seattle Times Co. v. U.S. Dist. Ct. for W. Dist. of Wash.*, 845 F.2d 1513, 1516 (9th Cir. 1988) (pretrial detention proceedings); *United States v. Chagra*, 701 F.2d 354, 363 (5th Cir. 1983) (bail reduction hearings); *United States v. Criden*, 675 F.2d 550, 555 (3d Cir. 1982) (pretrial suppression, due process, and entrapment hearings); *N.Y. C.L. Union v. N.Y.C. Transit Auth.* (“NYCTA”), 684 F.3d 286, 299 (2d Cir. 2012) (relevant function for experience and logic test is “the kind of work the proceeding actually does”).

II. Attorney Disciplinary Proceedings and Records Are by Nature Judicial and Presumed Public Under the First Amendment.

The experience and logic test compels a presumption of access under the First Amendment to attorney disciplinary proceedings and related records before the Attorney Grievance Committee of the Third Department (the “Grievance Committee”) and the Appellate Division.

A. Experience: Attorneys Have Historically Been Disciplined in Public.

Attorney disciplinary proceedings in New York are judicial proceedings under the authority and supervision of the Appellate Division. *See* N.Y. Jud. Law § 90(2); Rules for Attorney Disciplinary Matters, N.Y. Comp. Codes R. & Regs. tit. 22, § 1240 (2016) (hereinafter “22 N.Y.C.R.R. § 1240”); *C.R. Corps v. LaSalle*, No. 24-2251-cv, --- F.4th ----, 2026 WL 2177359, at *1 (2d Cir. July 29, 2026).

There are three stages to the attorney disciplinary judicial process in New York. First, the Grievance Committee staff (including the Chief Attorney) appointed by the Appellate Division reviews the “written original complaint” for facial sufficiency. 22 N.Y.C.R.R. §§ 1240.5 & 1240.7. At the second stage, the Chief Attorney and staff may investigate allegations, “comprehensively” document findings and evidence in a report, and make a recommendation to the Grievance Committee, which deliberates as a neutral body and votes on one of four dispositions: (1) dismissal; (2) a Letter of Advisement; (3) a written Admonition;

or (4) authorization for a formal proceeding upon a finding of “probable cause to believe that the respondent engaged in professional misconduct warranting the imposition of public discipline.” *Id.* § 1240.7(d)(vi). The Committee’s disposition is memorialized in a letter, and disciplinary action taken by the Committee enters the attorney’s permanent record. *See id.* § 1240.2. The third stage is a formal disciplinary adversarial proceeding in the Appellate Division, which may dismiss, remand for private discipline, or impose public discipline. *See id.* § 1240.8.

The Grievance Committee’s “authoritative determinations” at the second stage of the process outlined above are judicial pronouncements and act as “the last and most important step in nearly every proceeding regarding attorney misconduct.” *C.R. Corps*, 2026 WL 2177359, at *18 (quotation marks and citations omitted); *see also id.* at *19 n.17 (noting that in 2022, only 15 matters were referred to the Second Department for disciplinary proceedings out of over one thousand complaints resolved by the Committee). The Committee, upon a “developed factual record” after an adversarial proceeding, issues “final decisions . . . much like a final state court judgment.” *Id.* at *19; *see also Wiener v. Weintraub*, 22 N.Y.2d 330, 331–32 (1968) (“[T]he filing of [a] complaint [with a Grievance Committee] initiate[s] a judicial proceeding.”); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 433 (1982) (“From the very beginning a disciplinary proceeding is judicial in nature, initiated by filing a

complaint with an ethics and grievance committee.”) (quotation marks and citation omitted).

Likewise, the relatively few proceedings rising to the level of adjudication before the Appellate Division are plainly judicial in nature. *See* 22 N.Y.C.R.R. § 1240.8; *C.R. Corps*, 2026 WL 2177359, at *17 (“The type of adjudicative work that Second Department formal proceedings engage in today—*i.e.*, imposing weighty sanctions after an adversarial presentation of evidence and argument—is a direct continuation of a tradition of removal or suspension of attorneys by judges exercising their plenary authority in open court.”) (quotation marks and citation omitted).

Applying the “experience and logic” test to New York attorney disciplinary proceedings and records concerning grievance complaints against prosecutors, the Second Circuit recently affirmed that the test supports a presumptive First Amendment right of access. *C.R. Corp*, 2026 WL 2177359, at *1. The right of access attached to attorney disciplinary proceedings “also encompasses all documents that are necessary to effectuate that right.” *Id.* at *17; *United States v. Greenwood*, 145 F.4th 248, 255 (2d Cir. 2025) (“The First Amendment right of

access applies to judicial documents that are a necessary corollary of the capacity to attend the relevant proceedings.”) (quotation marks and citation omitted).²

As the Second Circuit detailed in its thorough and well-reasoned opinion, historical experience dating back to 1275 in England and the earliest days of the republic mandates a presumption of openness for disciplinary proceedings and records. *C.R. Corp*, 2026 WL 2177359, at *16–17 (detailing long and “robust history of open disciplinary proceedings, wherein an attorney may be suspended or disbarred by a court sitting in equity”). The Grievance Committee, which disposes of nearly all complaints of attorney misconduct that survive the initial screening, “is an outgrowth of the historically public adjudication of attorney discipline,” and the First Amendment’s presumption of access consequently applies to the Committee’s disciplinary process. *Id.* at *18–19. The same is true of judicial proceedings and related records before the Appellate Division. *See id.* at *16; *see also In re Kelly*, 59 N.Y. 595, 596 (1875) (holding New York disbarment

² In *Civil Rights Corps*, the plaintiffs expressly limited their request to hearings and records from Appellate Division proceedings and the Grievance Committee’s final dispositions, excluding other records and aspects of the Committee’s adjudicative function. *See* 2026 WL 2177359, at *8. The Second Circuit, however, reasoned that the First Amendment’s presumption of access applies to the Committee’s disciplinary process as a whole; logically the presumption should encompass “all documents and records reasonably implicated in understanding those proceedings” before the Committee. *Id.* at *15, 18–19 (finding the relevant function of the Committee for the experience and logic test is its “adjudicative work required to decide . . . Grievance Complaints”); *see also In re Demetriades*, 58 F.4th at 45–46; *Lugosch*, 435 F.3d at 124.

proceeding “is of a public nature and *quasi* criminal”); *In re Spencer*, 137 A.D. 330, 331 (1st Dep’t 1910) (same).

New York’s Judiciary Law § 90(10), enacted in its original form in 1945, is both a geographical and historical outlier that fails to “override the preceding centuries of open proceedings”; New York is one of only four states that maintain confidentiality of disciplinary proceedings until formal charges are sustained. *C.R. Corps*, 2026 WL 2177359, at *17; *El Vocero de P.R. v. Puerto Rico*, 508 U.S. 147, 150–51 (1993) (explaining that for the experience and logic test it is nationwide experience with the openness of a proceeding that is relevant, rather than the localized experience of a specific jurisdiction).³

Considering the longstanding Anglo-American history of public proceedings to decide claims of attorney misconduct, experience dictates that Grievance Committee and Appellate Division adjudicative proceedings and records should be presumptively public.

³ The Court of Appeals did not hold otherwise in *Johnson Newspaper Corp. v. Melino*, 77 N.Y.2d 1 (1990). In *Johnson Newspaper*, the issue presented to the court was whether the history prong of the constitutional test was valid, which the court held was the case, *see id.* at 5, and which is not in dispute here. Because the parties did not show evidence of a historical right or logic of access to the dentist disciplinary hearings at issue in *Johnson Newspaper*, the court declined to find a First Amendment presumption of access. *See id.* at 7–8. This is in stark contrast with the Second Circuit’s recent and highly detailed analysis of the historical precedent for open attorney disciplinary proceedings, the subject of the present Petition.

B. Logic: Public Access Plays a Significant Positive Role in the Attorney Disciplinary Process.

As to the logic element of the constitutional test, public access “plays a significant positive role in the functioning of” attorney disciplinary proceedings. *Press-Enter. II*, 478 U.S. at 8.

In *Richmond Newspapers*, the Supreme Court explained how public access to criminal trials enhances “the performance of all involved”; protects judges from imputations of dishonesty; discourages misconduct; educates the public on the workings of the justice system; and provides an outlet for community concern, hostility, and emotion. 448 U.S. at 569–71. As the Court noted, “it is difficult for [the public] to accept what they are prohibited from observing.” *Id.* at 572.

The same logic applies here. The “primary focus” of the attorney disciplinary process in New York is to “protect the public in its reliance upon the presumed integrity and responsibility of lawyers.” *In re Levy*, 37 N.Y.2d 279, 282 (1975) (quoting *In re Kahn*, 38 A.D.2d 115, 124 (1st Dep’t 1972), *aff’d*, 31 N.Y.2d 752). As the Court of Appeals has said, “[t]he administration of justice must not only be above reproach, it must also be beyond the suspicion of reproach.” *People v. Savvides*, 1 N.Y.2d 554, 556 (1956). Public access to attorney disciplinary proceedings protects their participants, encourages good conduct, educates the public, and sustains public confidence in the system. *See C.R. Corps*, 2026 WL 2177359, at *17; *Press-Enter. I*, 464 U.S. at 508 (“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.”).

As the Second Circuit found in determining that logic supported access to the New York attorney disciplinary process, the “interest in the faithful administration of justice is heightened when the misconduct of attorneys is at stake, especially so when the purported misconduct involves state prosecutors who may be subject to election or appointment and operate under the aegis of the State.” *C.R. Corps*, 2026 WL 2177359, at *20. Prosecutorial misconduct “is of exceptional public interest” because it “bear[s] both on the fair administration of justice for criminal defendants and the efficacious prosecution” of the law. *United States v. Nejad*, 521 F. Supp. 3d 438, 443 (S.D.N.Y. 2021).

Logic firmly supports presumptive public access to attorney disciplinary process and related records. Conversely, the blanket secrecy imposed by Judiciary Law § 90(10) subverts the admirable aims of that process.

III. Judiciary Law Section 90(10) Infringes Upon the First Amendment Rights of the Public and the Press.

As a categorical restriction on public access to attorney disciplinary proceedings, Section 90(10) contravenes the First Amendment on its face. By doing so, it moreover impedes the press’s ability to gather information and report

on important public matters, as well as the public’s ability to receive such information, offending the First Amendment on multiple grounds.

The constitutional presumption of access may be overcome “only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enter. I*, 464 U.S. at 510; *see also Press-Enter. II*, 478 U.S. at 13–14. Nothing less than a “substantial probability” of harm to a compelling interest may justify denial of the access right. *Press-Enter. II*, 478 U.S. at 14–15.

Consistent with this test, the Supreme Court has rejected blanket exceptions to the constitutional right of access, as they “cannot be viewed as a narrowly tailored means of accommodating the State’s asserted interest[.]” *Globe Newspaper*, 457 U.S. at 606–07, 609, 611 n.27 (“[A] mandatory rule, requiring no particularized determinations in individual cases, is unconstitutional.”). The uniform prohibition of Section 90(10) unavoidably cannot be narrowly tailored to “preserve higher values” such as privacy or lawyer reputations. *Press-Enter. I*, 464 U.S. at 510; *In re Aretakis*, 16 A.D.3d 899, 900 (3d Dep’t 2005) (purpose of Section 90(10) is to protect complainant’s privacy and attorney’s reputation). Such interests cannot invariably and categorically “meet the ‘weighty’ standard for overriding the presumptions of open records and public access.” *In re Demetriades*, 58 F.4th at 46; *see also In re Gitto Glob. Corp.*, No. 05-CV-10334,

2005 WL 1027348, at *12 (D. Mass. May 2, 2005), *aff'd*, 422 F.3d 1 (1st Cir. 2005) (interest in “avoiding embarrassment and protecting a measure of privacy” insufficient to overcome First Amendment right of access to bankruptcy report).

In addition, a fair examination of the higher constitutional values implicated by Section 90(10) makes clear that wholesale closure of disciplinary proceedings is not warranted. By its blunderbuss approach, Section 90(10) not only harms the public access right but also injures the First Amendment rights of media *amici* to conduct newsgathering and report on matters of heightened public interest. *See Richmond Newspapers*, 448 U.S. at 576 (“[W]ithout some protection for seeking out the news, freedom of the press could be eviscerated.”) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)); *Food Lion, Inc. v. Cap. Cities/ABC, Inc.*, 194 F.3d 505, 520 (4th Cir. 1999) (recognizing “First Amendment interests in newsgathering”) (citation omitted). Indeed, because reporters “serve[] as the ‘agent’ of interested citizens,” the press may be seen as the “chief beneficiary” of the access right. *Richmond Newspapers*, 448 U.S. at 586 n.2 (Brennan, J., concurring).

Compounding the constitutional harm, Judiciary Law § 90(10) further disregards the public’s First Amendment right to *receive* information on matters of significant interest. *See, e.g., Walker v. Tex. Div., Sons of Confederate Veterans*, 576 U.S. 200, 207 (2015) (“[T]he Free Speech Clause helps produce informed

opinions among members of the public, who are then able to influence the choices of a government that, through words and deeds, will reflect its electoral mandate”); *Richmond Newspapers*, 448 U.S. at 576 (“Free speech carries with it some freedom to listen”); *Kleindienst v. Mandel*, 408 U.S. 753, 762–63 (1972) (“It is now well established that the Constitution protects the right to receive information and ideas. ‘This freedom (of speech and press) . . . necessarily protects the right to receive’”) (alterations in original) (citations omitted); *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982) (plurality opinion) (“[T]he right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom.”).

Section 90(10) therefore unduly hinders the press and the public from shining a light upon New York’s attorney disciplinary system. The present Petition, seeking records concerning the alleged misconduct of a top federal prosecutor, is a salient illustration of this. “The prosecutor has more control over life, liberty, and reputation than any other person in America.” Robert Jackson, *The Federal Prosecutor*, 24 J. Am. Judicature Soc’y 18 (1940), https://www.roberthjackson.org/wp-content/uploads/2015/01/The_Federal_Prosecutor.pdf. Prosecutor misconduct casts doubt on the fairness of the justice system as a whole. As the Supreme Court has observed, “it would be difficult to single out any aspect of government of higher concern and importance to the people than the

manner in which criminal trials are conducted.” *Richmond Newspapers*, 448 U.S. at 575 (plurality opinion); *see also Butterworth v. Smith*, 494 U.S. 624, 632 (1990) (“[P]ublication of information relating to alleged governmental misconduct . . . has traditionally been recognized as lying at the core of the First Amendment.”); *Mills v. State of Ala.*, 384 U.S. 214, 219 (1966) (press scrutiny serves “as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve”).

Nor does the shroud of secrecy around the disciplinary system of private attorneys serve the public, who may have no way of knowing that a lawyer they seek to engage has been subject to private discipline. Lawyers are “officer[s] of the legal system with special responsibility for the quality of justice. . . . [A] lawyer should further the public’s understanding of and confidence in the rule of law and the justice system[.]” N.Y. State Bar Ass’n, N.Y. Rules of Prof’l Conduct, Preamble(1) (2026); *see also In re Zuckerman*, 20 N.Y.2d 430, 439 (1967).

Sealing all records concerning the discipline of lawyers entrusted by members of the public to vindicate their rights undermines confidence in the system.

Private attorney disciplinary cases may themselves be highly newsworthy as well, with the disbarment of former New York City mayor Rudolph Giuliani as a recent prominent example. *See In re Giuliani*, 230 A.D.3d 101 (1st Dep’t 2024).

Mr. Giuliani’s disciplinary proceeding was newsworthy given his stature alone, and his disbarment was premised on matters of the most significant possible public interest—Mr. Giuliani’s intentional false statements as the president’s attorney to lawmakers, the public, and the courts, which misconduct “actively contributed to the national strife” following the 2020 presidential election. *Id.* at 124. Mr. Giuliani’s case, albeit an extreme example, illustrates the stakes that may be present in the discipline of private attorneys. *See id.* at 120 (citing referee’s finding that Mr. Giuliani’s “singular reputation and position as the personal attorney for the then President of the United States gave his acts and words a special currency to the public.”).

The public interest in the oversight of prosecutors and private attorneys could scarcely be higher, particularly since the disciplinary system as a rule sheds precious little light on its functioning and issues public punishment only in the rarest of cases. *See* Pet. Br. at 23 n.3. *ProPublica* published an article in 2013 explaining that prosecutorial misconduct in New York City is almost never punished, and only one percent of 91,000 attorney complaints from an eight-year period in the First and Second Department committees resulted in public sanctions.⁴ *See also* Attorney Grievance Committee, Supreme Court, Appellate

⁴ *See* Joaquin Sapien & Sergio Hernandez, *Who Polices Prosecutors Who Abuse Their Authority? Usually Nobody*, PROPUBLICA (Apr. 3, 2013),

Division First Judicial Department, 2023 Annual Report 48–50 (2023), <https://perma.cc/FGE7-YXRN> (compared to over 4,000 cases disposed of by Chief Attorney, just 301 were referred to the Appellate Division, with no prosecutors disciplined in 2023). It is impossible for the public to evaluate the propriety of these numbers with the entire system masked in secrecy.

Having found the experience and logic test favored a presumption of public access to the disciplinary proceedings of prosecutors, the Second Circuit in *Civil Rights Corps* held that the First Amendment presumptively required access to the Grievance Committee and Appellate Division records and proceedings requested by the plaintiffs. *See* 2026 WL 2177359, at *20. The State had made no showing relating to purported higher values or narrow tailoring that would justify closure, and the court affirmed the district court’s finding that the State had not overcome the constitutional presumption of access. *See id.*; *see also C.R. Corp v. LaSalle*, 741 F. Supp. 3d 112, 170–71 (S.D.N.Y. 2024). Given the overbreadth of Section 90(10) and the constitutional values at stake, a sufficiently narrow particularized showing justifying the statute as written is not possible.

As with any other judicial proceeding, the adjudication of attorney discipline “is a formal act of government, the basis of which should, absent exceptional

<https://www.propublica.org/article/who-polices-prosecutors-who-abuse-their-authority-usuallynobody>.

circumstances, be subject to public scrutiny.” *Lugosch*, 435 F.3d at 121 (quoting *Joy v. North*, 692 F.2d 880, 893 (2d Cir. 1982)); see also *Richmond Newspapers*, 448 U.S. at 569 & n.7 (quoting 1 J. Bentham, *Rationale of Judicial Evidence* 524 (1827)) (openness is “the keystone” to the competent conduct of judicial proceedings). The media *amici* make such scrutiny their mission, which is only made possible by the constitution’s promise of access to the public.

CONCLUSION

For the reasons stated above, the Court should grant the Petition.

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Respectfully Submitted,



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ADDENDUM

Advance Publications, Inc. is a global media company that publishes the *Staten Island Advance* and the *Post Standard*. *The Staten Island Advance* is a daily newspaper serving Staten Island covering the latest local news, sports, and breaking updates, available in print and at www.silive.com. *The Post-Standard* provides extensive coverage of local news, sports, and culture in Syracuse and Central New York, available at www.syracuse.com and thrice weekly in print.

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