

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

COURTHOUSE NEWS SERVICE,  
*Plaintiff-Appellee/  
Cross-Appellant,*

v.

MICHAEL D. PLANET, in his official  
capacity as Court Executive  
Officer/Clerk of the Ventura  
County Superior Court,  
*Defendant-Appellant/  
Cross-Appellee.*

Nos. 16-55977  
16-56714

D.C. No.  
2:11-cv-08083-  
SJO-FFM

OPINION

Appeal from the United States District Court  
for the Central District of California  
S. James Otero, District Judge, Presiding

Argued and Submitted June 28, 2018  
Pasadena, California

Filed January 17, 2020

Before: Kim McLane Wardlaw, N. Randy Smith,  
and Mary H. Murguia, Circuit Judges.

Opinion by Judge Wardlaw;  
Concurrence by Judge N.R. Smith

**SUMMARY\***

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**Civil Rights**

The panel affirmed in part, and reversed in part, the district court's summary judgment in favor of the Courthouse New Service in its action seeking immediate access to newly filed civil complaints from Ventura County Superior Court.

Prior to 2014, Ventura County had a "no-access-before-process" policy pertaining to new civil complaints which often resulted in significant delays between the filing of a complaint and its availability to Courthouse News Service. After this suit was filed, the County dropped the no-access-before-process policy and instituted a "scanning policy," which requires court staff to scan new civil complaints before reviewing or processing them. After scanning, the complaints are available on public computer terminals in the Ventura County clerk's office. Prior to July 2016, complaints filed after 3:00 PM were scanned and made publicly available the next day. The district court concluded that both Ventura County's no-access-before-process policy and its scanning policy unconstitutionally infringed Courthouse News Service's right to timely access the complaints.

Applying *Press-Enterprise Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1 (1986), the panel held that the press has a qualified right of timely access to newly filed

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\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

civil nonconfidential complaints that attaches when the complaint is filed. However, this right does not entitle the press to immediate access to those complaints. Some reasonable restrictions resembling time, place, and manner regulations that result in incidental delays in access are constitutionally permitted where they are content-neutral, narrowly tailored and necessary to preserve the court's important interest in the fair and orderly administration of justice.

The panel held that although Ventura County has a substantial interest in the orderly administration and processing of new complaints, its former no-access-before-process policy failed, under a rigorous but not strict scrutiny analysis, both prongs of the balancing test set forth in *Press-Enterprise II*. Thus, Ventura County had not shown a "substantial probability" that more contemporaneous access to the newly filed complaints would impair its interest in orderly administration. In fact, the record demonstrated that the lengthy delays under the no-access-before-process policy were entirely unrelated to Ventura County's asserted governmental interests. Moreover, the policy caused far greater delays than were necessary to adequately protect Ventura County's administrative interests given the reasonable alternatives available. The panel affirmed the district court's summary judgment as to the no-access-before process policy.

The panel held that Ventura County's scanning policy passed constitutional scrutiny. The panel determined that there was a substantial probability that Ventura County's interest in the fair and orderly administration of new judicial filings would be impaired if the scanning policy was not in place. Moreover, unlike with the no-access-before-process policy, there was nothing in the record to indicate that

Ventura County considered but rejected reasonable alternatives to the scanning policy. Additionally, the panel noted that prior to 2014, Ventura County was undergoing severe budget constraints, and it had demonstrated that the overnight delay in access to complaints filed during the last ninety minutes of the court's public hours was no greater than essential to manage necessary court operations under the circumstances existing at the time. The panel therefore reversed the district court's grant of summary judgment as to the scanning policy, vacated the district court's injunction and award of fees, and remanded for further consideration consistent with the panel's opinion.

Concurring as to part III of the opinion, Judge N.R. Smith stated that the majority correctly determined that Ventura County's access policies resembled time, place, and manner restrictions—they were content-neutral and affected only the timing of access to the newly filed complaints. However, Judge N.R. Smith stated that rather than adopt the time, place, and manner test, the majority applied a strict scrutiny analysis which Supreme Court precedent does not require.

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### COUNSEL

Robert A. Naeve (argued), Craig E. Stewart, Erica L. Reilly, and Jaclyn B. Stahl, Jones Day, Irvine, California; Frederick B. Hayes, Hayes Law Office, Hermosa Beach, California; for Defendant-Appellant/Cross-Appellee.

Rachel Matteo-Boehm (argued), Roger Myers, Jonathan Fetterly, and Leila Knox, Bryan Cave LLP, San Francisco, California, for Plaintiff-Appellee/Cross-Appellant.

Caitlin Vogus (argued), Bruce D. Brown, and Selina MacLaren, The Reporters Committee for Freedom of the Press, Washington, D.C., for Amicus Curiae The Reporters Committee for Freedom of the Press.

John C. Eastman, Center for Constitutional Jurisprudence, Chapman University Fowler School of Law, Orange, California; Keith R. Fisher, National Center for State Courts, Arlington, Virginia; for Amicus Curiae Conference of Chief Justices.

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## OPINION

WARDLAW, Circuit Judge:

“The peculiar value of news is in the spreading of it while it is fresh.” *Int’l News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918), *abrogated on other grounds by Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). This case pits the urgency of reporting on, and the public interest in obtaining, contemporaneous news about filings in our courts against administrative interests in the fair and orderly processing of those filings. During Courthouse News Service’s decade-long battle to obtain immediate access to newly filed complaints from Ventura County Superior Court, the drive for “fresh” news has only become more intense. In this digital age, newsfeeds and media platforms update the news by the minute or even by the second, and even traditional media deliver an endless stream of “breaking” news. Yet courts undeniably have an important administrative function that requires orderly processing of new filings, and this results in incidental delays to access by the press and public. We are asked to resolve these competing interests.

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