No. 21-764

In the

Supreme Court of the United States

PATRICK HUFF, *Petitioner*,

v.

STATE OF FLORIDA, *Respondent*.

On Petition for a Writ of Certiorari to the Florida District Court of Appeal, Fourth District

BRIEF OF THE FLOYD ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Floyd Abrams Institute for Freedom of Expression at Yale Law School promotes freedom of speech and freedom of the press, access to information, and government transparency. The Abrams Institute has a significant interest in defending robust constitutional protections for the right of access to government proceedings, a right critical to the proper functioning of our democracy.

The decision below, though litigated under Petitioner's Sixth Amendment rights, has serious implications for the public's First Amendment right to access government proceedings. We write to bring them to the Court's attention.

[1] Amicus notified all parties of its intent to file this brief at least ten days before the filing deadline. The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and neither counsel for a party nor a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has consistently held that the Sixth Amendment's explicit guarantee of a public trial is at least as protective of open proceedings as the implicit right of public access conveyed by the First Amendment. *See Waller v. Georgia*, 467 U.S. 39, 46 (1984); *Presley v. Georgia*, 558 U.S. 209, 212-13 (2010). The decision below rejects this principle. It upholds as permitted under the Sixth Amendment the type of categorical, mandatory closing of trial testimony that this Court has squarely held to violate the First Amendment. *See Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 610-11 (1982). *Certiorari* should be granted because the ruling of the Florida Supreme Court creates an illogical disparity between the First and Sixth Amendment rights that this Court has repeatedly rejected.

Review by this Court is also warranted because the protection of public access is a matter of significant concern—openness is invaluable to the proper functioning of the justice system. The presence of the public encourages better performance by all involved, discourages misconduct, perjury, and bias, and enables the public to know that justice is done. All this is undermined by the Florida statue at issue, which removes the public's right of access to the testimony and cross-examination of the alleged victim of a sex crime. If permitted to stand, the statute threatens to weaken the operation of the courts and can only undermine public confidence in the verdicts reached in cases involving sexual assault.

The Florida statute seeks to protect the privacy of sex crime victims by requiring closure without exception upon the request of an alleged victim. It is overbroad in requiring the courtroom to be closed even in widely reported cases where there may be no privacy to protect, and it is not narrowly tailored because a judge can adequately protect any privacy interest at stake on a case-by-case basis.

Nor is the statute's constitutional defect remedied by its narrow exception allowing "newspaper reporters or broadcasters" to remain when the courtroom is closed. Fla. Stat. § 918.16(2). This exception excludes many who play equally important roles in monitoring the courts and informing the general public, such as the types of court monitoring groups and academic researchers that have paved the way for significant domestic violence reforms in recent years. This is particularly problematic given that such individuals are likely to be present even in cases that no newspaper reporter or broadcaster is covering. The press exception may also exclude journalists who work for online news organizations, podcasts, or blogs, rather than newspapers and broadcast stations.

Certiorari should be granted because the constitutional question decided by the Florida Supreme Court involves a matter of significant public concern and conflicts with multiple decisions of this Court.

ARGUMENT

I. The Decision Below Conflicts With This Court's Rulings And Creates An Illogical Conflict Between The First And Sixth Amendments' Protection Of Public Trials

The challenged decision of the Florida Supreme Court rejects the established principle that a criminal defendant's Sixth Amendment right to a public trial is no less protective of open proceedings than the public's First Amendment access right. *See, e.g.*, *Presley v. Georgia*, 558 U.S. 209, 213 (2010) (*per curiam*) (same standards apply to First and Sixth Amendment objections to closed jury selection); *Waller v. Georgia*, 467 U.S. 39, 46 (1984) (same standards apply to First and Sixth Amendment objections to closed pretrial hearings). The decision affords a criminal defendant less protection under the Sixth Amendment to object to the closure of a trial witness's testimony than this Court has held to be required when any member of the public objects to closure under the First Amendment. The decision below warrants the attention of this Court because it creates a baseless and nonsensical conflict between the protection of public trials under the First and Sixth Amendments.

This Court has always interpreted the First and Sixth Amendments' separate protections for public trials in tandem. *Waller* thus holds that closure of a pretrial hearing over a defendant's Sixth Amendment objection "must meet" the very same First Amendment tests that govern closure of a pretrial

hearing. *Waller,* 467 U.S. at 47 (*citing Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984) ("*Press-Enterprise I*")). This Court expressly held in *Waller* that "the explicit Sixth Amendment right of the accused *is no less protective* of a public trial than the implicit First Amendment right of the press and public." *Id.* at 46 (emphasis added).

This congruity between the standards required to limit access under the two constitutional provisions led the Court in *Presley* to dispense with oral argument and summarily hold, in a *per curiam* decision relying on First Amendment precedent, that a criminal defendant has a Sixth Amendment right to a public voir dire. *Presley*, 558 U.S. at 212-13. This Court could find "no legitimate reason, at least in the context of juror selection proceedings, to give one who asserts a First Amendment privilege greater rights to insist on public proceedings than the accused has." *Id.* at 213.

If permitted to stand, the decision below does just that. It summarily rejected a criminal defendant's objection to a state statute that requires trials automatically to be closed to the public, without exception, at the request of an alleged victim of a sex crime. *See* Pet. App. 2a. This limits a defendant's Sixth Amendment public trial right in a way this Court squarely held to violate the public's First Amendment access right in *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982).

Globe Newspaper held that a Massachusetts law requiring a trial to be closed during the testimony of any alleged minor victim of a sex crime violated the public's First Amendment access right. As this Court has made clear, the public's qualified First Amendment right of access can be limited only where (1) public access to a specific proceeding would create a substantial probability of harm to a compelling interest, (2) no alternative can adequately protect that interest, (3) the access restriction imposed is narrowly tailored to effectively avoid the demonstrated harm and (4) the court makes factual findings that justify closure under these standards. *See Globe Newspaper,* 457 U.S. at 606-07; *Press-Enterprise I*, 464 U.S. at 510; *Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1, 13-14 (1986) ("*Press-Enterprise II*").

Massachusetts tried to justify the statute in *Globe Newspaper* by arguing that it protected minors' privacy and well-being. This Court agreed that protecting minor victims of sex crimes is a compelling state interest, and that this interest might well justify closed proceedings in most cases. *Globe Newspaper*, 457 U.S. at 607. Nevertheless, "as compelling as that interest is," this Court held that "it does not justify a *mandatory* closure rule, for it is clear that the circumstances of the particular case may affect the significance of the interest." *Id.* at 607-08. A mandatory closure rule thus "cannot be viewed as a narrowly tailored means of accommodating" an interest that could be fully accommodated simply by

requiring a "case-by-case" determination by the trial court.[2] *Id.* at 609.

The Florida statute similarly excludes the public from the testimony of alleged sex crime victims for the purpose of protecting their privacy, *see Kovaleski v. State*, 103 So.3d 859, 861 (Fla. 2012), and it plainly violates the First Amendment for all the same reasons as the Massachusetts statute did, and more.[3]

First, Florida's statute requires closures even where no compelling reason exists. *See Globe Newspaper*, 457 U.S. at 606-07 (only compelling interests may justify abridging the First Amendment access right). The Florida Supreme Court upheld the

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[2] Lower federal courts have consistently applied *Globe Newspaper* to reject mandatory closure rules in proceedings subject to the First Amendment access right. *See, e.g.*, *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 506-09 (1st Cir. 1989) (holding unconstitutional statute mandatorily sealing records of criminal cases ending in acquittal or finding of no probable cause); *Hartford Courant Co., LLC v. Carroll*, 986 F.3d 211, 221-23 (2d Cir. 2021) (holding plaintiffs likely to succeed on the merits of First Amendment challenge to statute mandatorily sealing juvenile court records in cases transferred to the adult criminal docket); *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 705-10 (6th Cir. 2002) (finding likelihood of success for claim that First Amendment bars rule mandatorily closing "special interest" deportation proceedings); *cf. U.S. v. A.D.*, 28 F.3d 1353, 1358-59 (3d Cir. 1994) (construing Juvenile Delinquency Act, 18 U.S.C. § 5301 *et seq.*, not to mandate closed Juvenile Court proceedings to avoid constitutional conflict).

[3] There is no question that the public's First Amendment access right extends to the criminal trial proceedings from which the public was barred in this case. *See Globe Newspaper*, 457 U.S. at 603; *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980) (plurality).

statute as a protection of victims' privacy,[4] but the statute sweeps far more broadly. It requires closure for any reason at all upon the request of an alleged victim, even if the crime and the victim's identity have been widely reported.[5]

Second, any compelling privacy interest that does exist in a particular case involving an alleged sex crime can effectively be addressed through a case-by-case determination by the court, rendering mandatory closure under the control of the victim unnecessary.

Third, by the same token, a mandatory rule "cannot be viewed as a narrowly tailored means of accommodating" an interest that can could be fully accommodated with a "case-by-case" determination. *Globe Newspaper,* 457 U.S. at 609.

Fourth, the mandatory statute requires no findings of fact to support closure beyond the trial court's confirmation that the statute itself is satisfied, *i.e.,* that a victim requested closure. *See Kovaleski*, 103 So.3d at 861 (holding that trial courts need only "ensure that the statute is in fact applicable to the case before them and is properly applied").

The Florida statute's abrogation of all judicial discretion to determine what degree of closure (if any)

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[4] *See Kovaleski*, 103 So.3d at 861 (holding that the statute is meant to advance the "interest of protecting the victim").

[5] The law is also ineffective in protecting privacy in that it excludes only certain members of the public, and allows the press to report on the alleged victim's testimony. *See* Fla. Stat. § 918.16(2) (exempting "newspaper reporters or broadcasters" from the mandatory closure rule).

is required to protect the privacy of a sex crime victim conflicts directly with *Globe Newspaper*'s holding on the limits to closure imposed by the First Amendment access right. The decision upholding the statute under the Sixth Amendment thus affords a criminal defendant less right to prevent closure than a member of the general public, a situation this Court has said must not exist. *Waller,* 467 U.S. at 46; *Presley,* 558 U.S. at 212-13.

Indeed, the Florida statute at issue may be more problematic under the First Amendment than the Massachusetts statute struck down in *Globe Newspaper*. There, the Massachusetts legislature claimed authority for itself to close certain judicial proceedings; here Florida purports to delegate that power to a private party. *See* Fla. Stat. § 918.16(2) (providing that "the court *shall clear* the courtroom of all persons *upon the request of the victim*") (emphases added). But the First Amendment does not allow private parties to exclude the public from judicial proceedings.

In *El Vocero de Puerto Rico v. Puerto Rico*, this Court summarily held unconstitutional a Puerto Rican rule of criminal procedure that required preliminary hearings to be closed "upon the request of the defendant, without more." *El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147, 150 (1993) (per curiam). The unanimous Court took issue with the absence of any "standard" in the rule that would "protect public access." *Id.* The Florida statute suffers from the same problem.

The Second Circuit relied upon the *El Vocero* principle in striking down a New York Transit Authority rule excluding the public from transit bureau proceedings at the request of the respondent. *New York Civil Liberties Union v. New York City Transit Authority*, 684 F.3d 286 (2d Cir. 2012). The court found the rule unconstitutional because "[a] respondent need not articulate any interest prejudiced by public access" and "the hearing officer neither considers alternatives nor makes any findings regarding the relative weight of the interests at stake." *Id.* at 305. Giving private parties discretion to close a hearing, the court held, allows them "to wield . . . arbitrary power." *Id.* The Florida statute does just that.

All apart from the failure of the Florida statute to satisfy the *Waller* standards governing limitations on a defendant's Sixth Amendment public trial right, *see* Pet. 14-19, the statute violates the public's access right under the First Amendment in multiple respects. *Certiorari* should be granted because, if permitted to stand, the decision upholding this statute creates a conflict between First and Sixth Amendment access rights for no legitimate reason, and contravenes this Court's consistent holdings that the Sixth Amendment public trial right is at least as broad as the public's First Amendment access rights.

II. The Florida Supreme Court's Failure To Uphold Federal Constitutional Standards Governing Public Access Threatens To Undermine the Performance Of The Courts And Public Confidence In Them

The Petition presents a significant constitutional issue that deserves to be reviewed by this Court. The mandatory closure of trial testimony required by the Florida statute upheld below threatens to undermine both the quality of justice in sexual assault cases and public confidence in the verdicts rendered in them, interests that are directly advanced by the openness the federal constitution generally requires.

A. The Openness Abridged by the Florida Statute Promotes the Proper Functioning of the Courts and Is Essential to Public Confidence that Justice Is Being Done

This Court has underscored the importance of the public's ability to attend judicial proceedings. Among other things, it helps to ensure that proper procedures are followed and creates incentives for all participants to perform at their best. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569-70 (1980) (plurality). Public access also discourages perjury, misconduct, and bias that can thrive in secrecy, and in this respect "is an effective restraint on possible abuse of judicial power." *Id.* at 592 (Brennan, J., concurring in the judgment) (internal quotations omitted); *accord Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) ("[T]he press . . . guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.").

Public access to judicial proceedings, in short, "enhances the quality and safeguards the integrity of the factfinding process." *Globe Newspaper*, 457 U.S. at 606. It promotes the proper function of the courts and the quality of their work.

The Florida statute's mandatory closure of what is often the most important—and sometimes only—testimony in cases involving serious criminal allegations undermines all these interests advanced by the constitutional protection of public access.

Mandatory closure of the victim's testimony also limits the ability of the community to have confidence that justice is being done—that sex criminals are properly being brought to account and courts are adequately protecting victims. *See Richmond Newspapers*, 448 U.S. at 570 (plurality) (discussing the "community therapeutic value" of public trials); *Press-Enterprise I*, 464 U.S. at 509 (observing that publicity can temper the "community urge to retaliate"). As Chief Justice Burger famously observed, "[p]eople 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 (plurality). Public access preserves "the appearance of fairness" that is "so essential to public confidence in the system." *Press-Enterprise II*, 478 U.S. at 9 (internal quotations omitted); *see Press Enterprise I*, 464 U.S. at 508 (same). It "fosters the important values of quality, honesty and respect for our legal system." *In re Providence Journal Co.*, 293 F.3d 1, 9 (1st Cir. 2002) (citation omitted).

Whether other testimony is publicly presented or not, it is difficult for the public to understand and accept that the system has worked properly when it is barred from hearing from the victim. The therapeutic value of access is especially important in cases involving sexual offenses, where the risk of vigilantism is heightened.[6]

The Florida statute, in short, threatens both to undermine the performance of the courts and public confidence in them.

B. The Statute's Narrow Press Exception Underscores the Reasons Why the First Amendment Prohibits Such Mandatory Closure Rules

In an apparent nod to the First Amendment, the Florida statute excludes "newspaper reporters or broadcasters" from its mandatory closure provision. Fla. Stat. § 918.16(2). This narrow exception is insufficient to satisfy First Amendment interests because the press cannot monitor every trial. The traditional press—newspaper reporters and broadcasters—will often not be present in the courtroom in cases that lack national prominence or significant local news value, given the financial pressures on the local news industry.[7] Fewer

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[6] *See* Michelle A. Cubellis et al., *Sex Offender Stigma: An Exploration of Vigilantism Against Sex Offenders*, 40 DEVIANT BEHAVIOR 225, 227 (2019). ("A serious consequence of the stigmatization of [sex offenders] is their risk of victimization at the hands of vigilantes.").

[7] *See* Joshua Darr, *Local News Coverage Is Declining—And That Could Be Bad For American Politics*, FIVETHIRTYEIGHT (June 2,

resources for local journalists means less reporting on local issues, including trials and sexual assault.

When the traditional press is absent, excluding the general public closes the court to all neutral persons who could observe the proceedings. *See* Fla. Stat. § 918.16(2) (exempting, apart from the press, only the parties, their families, guardians, attorneys and their secretaries, victim witness advocates, and court personnel). Excluding all neutral members of the public will undermine public confidence that the proceedings are conducted fairly because the public's ability to attend proceedings "gives assurance that established procedures are being followed and that deviations will become known." *Press-Enterprise I*, 464 U.S. at 508. Deviations cannot reliably "become known" if individuals inherently disposed to one party are the only source of information about what transpired.

Moreover, the "newspaper reporters or broadcasters," who the statute permits to remain, are not the only actors that play vital roles in ensuring the proper functioning of judicial proceedings. The statute excludes at least three others who may typically attend trials that the traditional press do not:

2021), https://fivethirtyeight.com/features/local-news-coverage-is-declining-and-that-could-be-bad-for-american-politics/ (collecting statistics on the decline of the local news industry over the past two decades).

1. *The exception does not apply to court monitoring groups.*

The press exception does not apply to court monitoring groups, grassroots organizations staffed largely by volunteers who observe criminal and civil proceedings involving sexual assault.[8] These groups came about "[i]n response to questions about the treatment of victims of domestic and sexual violence in their local court system."[9] Volunteers for court monitoring groups typically record their observations, which the organization then uses to spur reform. For instance, one court monitoring group in Florida identified a judge who was frequently disrespectful towards women in protective order hearings and wrote to his superiors, which apparently led to his reassignment to other matters.[10] Another group in Minnesota memorialized its observations in a report that made over 30 recommendations to the judicial system, some of which—including the creation of a specialized domestic violence court—were implemented.[11]

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[8] *See* Rebecca Hulse, *Privacy and Domestic Violence in Court*, 16 WM. & MARY J. WOMEN & L. 237, 274-78 (2009) (hereinafter Hulse) (describing court monitoring groups).

[9] Kimberly Wilmot Voss, *Court Watchers Changing Courthouse Rules*, WOMEN'S ENEWS (2003), https://womensenews.org/2003/08/court-watchers-changing-courthouse-rules/ (hereinafter Voss).

[10] *See* Hulse at 277.

[11] *See* Voss.

Effective court monitoring is impossible without access to judicial proceedings, including to the testimony of victims. In part, this is because court monitoring groups report on judges' demeanor, which is "important to ensure that those involved directly in the hearings, or those sitting in the gallery, leave the courtroom with a positive perception of court, whether or not the hearing resulted in their favor."[12] Court monitors' presence in the courtroom also positively influences the behavior of the attorneys and other hearing participants.[13]

The functions court monitors perform are precisely those that the public's qualified right of access is meant to protect. *See, e.g.*, *Richmond Newspapers*, 448 U.S. at 569 (plurality) (noting that Hale and Blackstone both observed that openness "gave assurance that the proceedings were conducted fairly to all concerned, and it discouraged perjury, the misconduct of participants, and decisions based on secret bias or partiality").

2. *The exception does not apply to researchers.*

The press exception also does not apply to researchers, who conduct valuable studies to inform the public about sexual assault cases and improve the functioning of the judicial system. In-person attendance during victim testimony is crucial to this research. For example, in a comprehensive 2009

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[12] Ellen Sackrison, *Court Monitoring: WATCH's First Look at Ramsey County Criminal Courts*, 17 (Oct. 2017), https://www.theadvocatesforhumanrights.org/res/byid/8288.

[13] *See* Voss.

study of specialized criminal domestic violence courts, "[c]ourtroom observation" was a key component of the study, as it allowed the researchers to collect data such as the "[t]ypes of interactions between the judge and the defendant," whether the courtroom setup enabled victims and offenders to sit separately, whether court officers accompanied victims, and the staff present in the courtroom.[14] Though these details may seem minute, they make tangible differences to the experience of sexual assault victims and thus influence their participation in criminal cases against their abusers.[15]

Courtroom observation also enables researchers to evaluate the use of pernicious stereotypes in sexual assault cases, particularly stereotypes related to victims.[16] For example, recent observational studies have found that defense counsel in UK rape trials rely significantly on myths about rape. This includes the

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[14] Melissa Labriola et al., *A National Portrait of Domestic Violence Courts*, NATIONAL INSTITUTE OF JUSTICE, 15, 104-06 (2009); https://www.ojp.gov/pdffiles1/nij/grants/229659.pdf.

[15] *See, e.g.*, Negar Katirai, *Retraumatized in Court*, 86 ARIZ. L. REV. 81, 96-98 (2020) (noting that sexual victims retraumatized by their experiences in court are less likely to cooperate with the prosecution, and that presence of victim advocates increases victim participation).

[16] *See* Office of the State Courts Administrator, *Florida's Sexual Violence Benchbook*, 14 (June 2017), https://www.flcourts.org/content/download/216163/file/Sexual-Violence-Benchbook2017.pdf ("Another factor that weighs heavily in sexual violence cases is a host of commonly held beliefs and ideas about rape and sexual violence that are often based more on myths than facts.").

tropes that "[r]ape complainants are commonly liars" in 87.5 percent of trials surveyed by one such study, and that "[r]ape by former partner/husband is not really rape" in half.[17] The study also recounts many instances in which the myths were brought up in defense counsel's cross-examination of the victim.[18] Yet this is the very testimony from which the Florida statute excludes the public. Pet App. 23a-24a.

It is impossible to understand or recommend ways to mitigate the use of pernicious stereotypes without observing them in action.[19] The Florida statute prevents researchers from systematically studying their effects—in particular, seeing them play out during victims' testimony—and improving the justice system for sexual assault victims.

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[17] Jennifer Temkin et al., *Different Functions of Rape Myth Use in Court: Findings From a Trial Observation Study*, 13 FEMINIST CRIMINOLOGY 205, 210 (2018) (hereinafter Temkin); *see also* Olivia Smith and Tina Skinner, *How Rape Myths Are Used and Challenged in Rape and Sexual Assault Trials*, 26 SOCIAL & LEGAL STUDIES 441, 449 (2017) (noting based on observational study that "rape myths were used extensively," were used by defense counsel to "undermine prosecution witnesses' credibility," were resisted by some judges and prosecutors, "but remained relevant for juries through a focus on identifying inconsistencies and discourses about rationality").

[18] *See* Temkin at 209-18.

[19] *See* HEATHER R. HLAVKA AND SAMEENA MULLA, BODIES IN EVIDENCE: RACE, GENDER, AND SCIENCE IN SEXUAL ASSAULT ADJUDICATION, 7 (2021) (noting advantages of courtroom observation in sexual assault case over reliance only on court records).

3. *The exception might not even apply to all journalists covering a trial.*

The press exception on its face applies only to "newspaper reporters or broadcasters" and thus may not even apply to all journalists. Fla. Stat. § 918.16(2). Potentially outside the press exception are, for example, freelance journalists, magazine reporters, podcasters, and reporters for online news organizations. While there does not appear to be a case addressing whether the press exception covers journalists who do not work for newspapers or broadcasters, trial courts have entered closure orders that would exclude them. *See, e.g.*, *Beahr v. Cannon*, No. 4:12CV298-MW/CAS, 2015 WL 235847, *10 (N.D. Fla. Jan. 16, 2015) (noting exclusion of all but the victim's guardian ad litem); *Griffith v. Tucker*, No. 3:11CV288/MCR/EMT, 2012 WL 3230413, *6 (N.D. Fla. July 5, 2012), report and recommendation adopted, No. 3:11CV288/MCR/EMT, 2012 WL 3206209 (N.D. Fla. Aug. 6, 2012) (noting exclusion of all but family members of the defendant and the alleged victim).

On a literal interpretation, the press exception does not apply to many members of the press who have played pivotal roles in reporting on sexual impropriety. Indeed, arguably the most notorious instances of sexual misconduct in each of the past two generations—President Clinton's affair with Monica Lewinsky, leading ultimately to his impeachment, and Harvey Weinstein's rape and sexual assault of women in Hollywood, launching the #MeToo movement—were broken by members of the press

other than newspaper reporters and broadcasters.[20] A press exception that excludes these members of the press does not effectively advance the First Amendment interest for which it was apparently designed.

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The importance of the federal constitutional right of public access, and the ways in which it is undermined by the Florida statute, are matters of significant concern that deserve the attention of this Court.

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[20] *See NEWSWEEK Kills Story on White House Intern Blockbuster Report: 23-Year Old, Former White House Intern, Sex Relationship with President*, DRUDGE REPORT (Jan. 17, 1998), https://web.archive.org/web/20060901114541/http://www.drudgereport.com/ml.htm; Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories*, NEW YORKER (Oct. 23, 2017), https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories.

CONCLUSION

For the foregoing reasons, this Court should grant *certiorari*.

Respectfully submitted,

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[21] This brief does not purport to express the views of Yale Law School, if any.