EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENNETH ROTH, DANIEL FROOMKIN, BEVERLY GAGE, PETER SCHMIDT-NOWARA, BENJAMIN WITTES, and ETHAN YOUNG,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as the President of the United States, STEVEN CHEUNG, in his official capacity as Assistant to the President for Communications, SEAN M. CURRAN, in his official capacity as Director of the Secret Service, and SUSAN WILES, in her official capacity as White House Chief of Staff,

Defendants.

Case No.: 1:26-cv-09327 (LGS)

AMICI CURIAE BRIEF OF FIRST AMENDMENT SCHOLARS IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

SHER TREMONTE LLP
Noam Biale
Douglas Jensen
Grace Coleman
90 Broad Street, 23rd Floor
New York, New York 10004
Tel.: (212) 202-2600
Fax: (212) 202-4156
nbiale@shertremonte.com

Attorneys for Amici Curiae

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INTEREST OF AMICI CURIAE[1]

Amici are First Amendment scholars and experts who have taught courses in constitutional law or the First Amendment, published articles and books on these topics, and dedicated significant attention to the study of First Amendment protections.

Based on their experience, Amici submit this brief to explain why the White House's viewpoint-based restrictions on press access injure the public—which depends on an independent press to obtain information about their government—and, ultimately, our democratic system of government.

Amici's names, titles, and institutional affiliations are set forth in Appendix A appended to this brief. Institutional affiliations are stated for purposes of identification only.

[1] No party or party's counsel authored this brief in whole or in part, and no person other than Amici or their counsel contributed money intended to fund its preparation or submission.

PRELIMINARY STATEMENT

This case concerns not only the rights of journalists to speak, report, and gather news, but also the First Amendment rights of the public. Citizens cannot enter the Oval Office, travel aboard Air Force One, or attend other restricted presidential events, and must depend on an independent press to serve as their proxy in those spaces in order to be informed about the workings of their government and the actions and statements of the President of the United States. The press performs a critical function in those spaces: it observes government conduct, asks sometimes challenging questions, and conveys information about policies and political issues to the public through its exercise of editorial judgment.

Plaintiffs allege that President Trump and the other defendants have enacted a Policy[2] of punishing members of the White House press corps whose reporting the President dislikes, including by revoking journalists' press credentials and expelling them from spaces where the press has historically been allowed to gather and report the news. Such spaces in and around the White House, such as the Briefing Room and Pebble Beach, along with others the President and his aides open to the press when he is away, such as Air Force One, have been opened to the press for newsgathering and reporting for many decades. The White House regulates this collection of spaces open to the press, which Plaintiffs denote as the White House Press Forum, by granting press passes and using a rotation system for press pool events.

By nakedly restricting press access to that Forum based upon viewpoint—actions the President himself describes as "the ban on the free press," Ex. 18 to Declaration of Katherine Fallow, dated October 26, 2026, ECF No. 11-75 at 26—the government unconstitutionally

[2] This brief adopts and incorporates the defined terms set forth in Plaintiffs' Complaint and Motion for a Preliminary Injunction, including the "Policy," and the "White House Press Forum." Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction ("Mot."), ECF No. 11 at 1; Complaint ("Compl."), ECF No. 1.

influences the questions the press asks, the observations it makes, and the information that is ultimately available to the public. By shaping what the public can hear and know about the actions of the federal government and its leader, the President of the United States, the Policy implicates First Amendment interests that reach far beyond the individual outlets and journalists the President excludes. It deprives the public of reporting and information that the government might dislike or prefer the public not hear, warns other news organizations that critical coverage may result in government retaliation, and may result in self-censorship that diminishes the public's access to information about its government.

The White House Press Policy violates the most fundamental rights in our constitutional system. It is foundational First Amendment law that the public can challenge such a policy that threatens their right to receive information about the President reported by an independent press.

ARGUMENT

I. THE FIRST AMENDMENT PROTECTS THE PEOPLE'S RIGHT TO RECEIVE INFORMATION ABOUT THE WORKINGS OF ITS GOVERNMENT.

The right to receive information about politics and government is fundamental to the protections of the First Amendment. It is well established that "expression on public issues 'has always rested on the highest rung of the hierarchy of First Amendment values.'" *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (quoting *Carey v. Brown*, 447 U.S. 455, 467 (1980)). Indeed, "[w]hatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966); *see also Virginia v. Black*, 538 U.S. 343, 365 (2003) (noting that "lawful political speech" is at the "core of what the First Amendment is designed to protect."). The First Amendment was fashioned as a "constitutional safeguard . . . to assure unfettered interchange of ideas for the bringing about of

political and social changes desired by the people." *N.Y. Times v. Sullivan*, 376 U.S. 254, 269 (1964) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).

The Supreme Court has long recognized that these protections are indispensable to democratic self-government. The "maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people . . . is a fundamental principle of our constitutional system." *Stromberg v. California*, 283 U.S. 359, 369 (1931). Political speech receives the highest constitutional protection because, as the Court has explained, "[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Citizens United v. FEC*, 558 U.S. 310, 339 (2010).

The necessary corollary to the right to speak and engage on political matters is the right to listen to and receive political speech. *See id.* at 371 ("The right of citizens to inquire, *to hear*, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.") (emphasis added); *see generally In re Dow Jones & Co., Inc.*, 842 F.2d 603, 607 (2d Cir. 1988) (quoting *Young v. Am. Mini Theatres, Inc.,* 427 U.S. 50, 76 (1976) (Powell, J. concurring)) ("The corollary to the guarantee of free speech is that 'there be full opportunity for everyone to receive the message.'").

For this reason, the right of the public to receive information, from the press and otherwise, has been repeatedly recognized under the First Amendment. *See* Mot. at 13–14. That is because the Amendment "goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 783 (1978); *see also Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982) (plurality op.) (the right to receive ideas is "a necessary predicate to the recipient's meaningful exercise of his own

rights of speech, press, and political freedom"); *N.Y. Civ. Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 298 (2d Cir. 2012) (noting that the First Amendment "protects the public against the government's 'arbitrary interference with access to important information'") (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 583 (1980) (Stevens, J., concurring)). For example, the Court has recognized the right of individuals to receive political material by mail, *Lamont v. Postmaster Gen. of U.S.*, 381 U.S. 301 (1965); the right of American scholars to "hear, speak, and debate" with a foreign scholar with no personal right of entry to the country, *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972); and "the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences," *Red Lion Broad. Co. v. F.C.C.*, 395 U.S. 367, 390 (1969).

Listening members of the public therefore may challenge the Policy. *See generally In re Dow Jones*, 842 F.2d at 607 ("[T]he right[] of potential recipients of speech . . . to challenge the abridgment of that speech has already been decided."); *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) (holding that consumers of prescription drugs may challenge state restriction on drug price advertising).

II. THE INSTITUTIONAL PRESS SERVES AS THE PUBLIC'S PROXY IN RESTRICTED GOVERNMENT SPACES.

The free press is one of two institutions, along with religion, that receives its own independent protective clause in the First Amendment. *See* U.S. CONST. amend. I ("freedom of speech, or *of the press*") (emphasis added) (the "Press Clause"). This reflects the Framers' understanding that the free press is an institution vital to a self-governing society. *See Near v. State of Minn. ex rel. Olson*, 283 U.S. 697, 714, 717–20 (1931) (quoting the writings of James Madison, the "leading spirit in the preparation of the First Amendment of the Federal Constitution," in which Madison observed that "to the press alone . . . the world is indebted for all the triumphs which have

been gained by reason and humanity over error and oppression," and that the United States owed its status as a "free and independent nation" to the press). "The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs." *See Mills*, 384 U.S. at 219 (noting that the press is a "constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve").

Each citizen "relies necessarily upon the press to bring to him in convenient form the facts of those operations" of government, because "[w]ithout the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491–92 (1975). The Supreme Court has repeatedly recognized the important role of the press in our constitutional order, observing that "journalistic freedoms" are among those "which the First Amendment jealously protects." *F.C.C. v. League of Women Voters of Cal.*, 468 U.S. 364, 402 (1984). The reason for this special constitutional concern is straightforward: an "informed public opinion is the most potent of all restraints upon misgovernment," and "[t]he newspapers, magazines, and other journals of the country . . . have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity." *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936).

Nowhere is this constitutional function more important than when government activity occurs outside of ordinary public view. Because members of the public cannot access restricted spaces such as the White House, Air Force One, and other areas frequented by the President and his closest advisors, the public depends on the press to act as its surrogate in these spaces. *See*

Richmond Newspapers, 448 U.S. at 573 (describing the press as "surrogates for the public").[3] It is the press, not the government, that determines which events warrant attention, asks questions that officials may prefer not to answer, compares official accounts with other facts, and supplies important context necessary for the public to evaluate government conduct.

If only those news organizations that report favorably on the President are permitted in those spaces, information about the President and senior officials, their actions, and their unscripted expression may never reach the public. Compl. ¶ 56. And so long as the Policy remains in place, even if critical news organizations are permitted access to the Forum, they may decline to publish unflattering reports out of concern that doing so may jeopardize their continued access.

So long as news organizations continue to be excluded from the White House Press Forum on the basis of viewpoint, or operate in fear of such exclusion, the public loses out on critical information and reporting about the activities of our government.

III. VIEWPOINT-BASED PRESS EXCLUSIONS DIRECTLY INJURE THE LISTENING PUBLIC.

A. A Viewpoint-Curated White House Press Forum Diminishes the Diversity and Independence of the Information Received by the Public.

Central to the First Amendment rights of free speech and press is the right to question and criticize the government. *Texas v. Johnson*, 491 U.S. 397, 408–09 (1989) (noting that a "principal 'function of free speech under our system of government is to invite dispute,'" and that "'[i]t may indeed best serve its high purpose when it . . . creates dissatisfaction with conditions as they are'") (quoting *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949)); *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966)

[3] RonNell Andersen Jones, *The Public Benefits of Press Specialness* (noting the importance of the press acting as "the eyes and ears of the public" in settings where, as a practical matter, members of the public may be unable to observe for themselves), available at https://www.yalejreg.com/nc/symposium-saving-foia-09/.

("Criticism of government is at the very center of the constitutionally protected area of free discussion.").

The First Amendment was drafted in response to the "persistent effort on the part of the British government to prevent or abridge the free expression of any opinion which seemed to criticize or exhibit in an unfavorable light, however truly, the agencies and operations of the government," and was born out of the struggle against the restrictions that English colonial governors imposed on dissent. *Grosjean*, 297 U.S. at 245. Its protections work not only to prevent censorship, but also to proscribe "any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens." *Id.* at 249–50 (quoting 2 T. Cooley, Constitutional Limitations 886 (8th ed. 1927)).

Thus, the First Amendment serves to "preserve an uninhibited marketplace of ideas." *League of Women Voters of Cal.*, 468 U.S. at 377. It does so by protecting both the freedom of expression and freedom of the press, the latter being premised on the understanding that a free press is "a condition of a free society," and that the "widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

Plaintiffs have alleged that the Policy serves to restrict the information made available to the public and to influence the editorial judgments made by members of the press. *See* Mot. at 7 (quoting statements from the President discussing the bans where he stated that the press "purposely write negative news" to "diminish the Republicans and a Republican administration"). As a result of the Policy, the government controls who may ask questions and what information may be gathered. Press access curated according to viewpoints favored by the government does

not merely burden individual journalists, but fundamentally alters the mix of information available to the public.

The First Amendment forbids this. Its protections rest on the presumption that the "right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection." *See Sullivan*, 376 U.S. at 270 (internal quotation marks omitted). This principle reflects a foundational premise of American democracy: that public opinion, rather than official decree, must govern public affairs. *See Masses Publ'g Co. v. Patten*, 244 F. 535, 540 (S.D.N.Y. 1917) (Learned Hand, J.), *rev'd*, 246 F. 24 (2d Cir. 1917) (the First Amendment protects the people's ability to participate in the formation of "that public opinion which is the final source of government in a democratic state"). Government officials may not manipulate the flow of information to the public to influence the viewpoints citizens may hear, consider, and ultimately adopt.

Thus, while the President has made clear he believes news coverage which is unfavorable to him is "bad for the country," Mot. at 8, that is a question the Constitution entrusts to the people—not the government. *See Bellotti*, 435 U.S. at 791–92 (the people "are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments"); *Wood v. Georgia*, 370 U.S. 375, 389 (1962) (The First Amendment contemplates that "errors in judgment or unsubstantiated opinions" are to be exposed by "counterargument and education," "not through punishment . . . for the expression").

B. The Government May Not Allocate Access Within a Forum According to Favorable Coverage.

A forum is created for First Amendment purposes when the government opens "a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects." *Cornelius v. N.A.A.C.P. Legal Def. & Educ.*

Fund, Inc., 473 U.S. 788, 802 (1985). To determine whether the government has opened a forum, courts look "to the policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum," and "the nature of the property and its compatibility with expressive activity." *Id.* at 802; *see also Perry v. McDonald*, 280 F.3d 159, 167 (2d Cir. 2001).

Over many decades, it has been the consistent policy of presidents and White Houses of both parties to open certain spaces in the White House and on its grounds, as well as others while the president is away, such as Air Force One, for the express purpose of allowing members of the White House press corps to engage in the protected expression of newsgathering and reporting. Those spaces, such as the Brady Press Briefing Room, are plainly compatible with expressive activity, and so constitute a forum for First Amendment purposes. The majority in *Associated Press v. Budowich*, No. 25-5109, 2025 WL 1649265 (D.C. Cir. June 6, 2025), was wrong to conclude that while the Briefing Room is such a forum, the Oval Office and Air Force One are not when opened to the press for general newsgathering and reporting purposes. *Id*. at *5–7. The question is not, as *Budowich* imagined, whether the President can choose with whom he gives an individual interview. *Id*. at *6. Of course he can. Under that logic, even the Briefing Room could be deemed a non-forum if the President discriminated access based upon viewpoint. This is not how forum analysis or the First Amendment operate. The question is instead whether spaces such as the Oval Office or Air Force One are opened to the members of press corps generally, even if only a limited number due to space restrictions, for newsgathering and reporting purposes. If so, as here, the space constitutes a forum for First Amendment purposes.

The level of scrutiny applicable to restrictions on speech in a protected forum depends on the type of forum at issue. *Matal v. Tam*, 582 U.S. 218, 243–44 (2017). No matter the type of

forum the government opens, however, it may not impose a restriction on speech based on the speaker's viewpoint, *see* Mot. at 19–20, 24 n.4, because, "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 95 (1972). The Policy's viewpoint-based restrictions on access to the Forum therefore violate the First Amendment. *See* Mot. at 24 n.4; *see also Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) ("When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant . . . The government must abstain from regulating speech when . . . the opinion or perspective of the speaker is the rationale for the restriction."). The newsgathering and reporting done by the press in the White House Forum is core political speech, and news organizations cannot constitutionally be penalized for that speech by the government's imposition of viewpoint-based restrictions. *See Nicholas v. City of New York*, No. 15-CV-9592 (JPO), 2017 WL 766905, at *5 (S.D.N.Y. Feb. 27, 2017) (noting it has been found impermissible to "withhold White House press passes in a content-based or arbitrary fashion").

Plaintiffs do not claim that every journalist has an unlimited entitlement to attend every presidential event, nor do they seek compelled access to closed government facilities. The First Amendment guarantees, however, that the government may not allocate access to a forum based on viewpoint. *See* Compl. ¶¶ 1, 21 (alleging that journalists have been expelled from spaces where they previously were able to gather, and to which members of the press have had access "for well over a century"); *see also Am. Broad. Cos. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977) ("[O]nce there is . . . participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable."); *Nicholas*, 2017

WL 766905, at *5 ("Equal press access is critical because exclusion of an individual reporter carries with it the danger that granting favorable treatment to certain members of the media allows the government to influence the type of substantive media coverage that public events will receive, which effectively harms the public.") (internal quotations omitted and alterations adopted); *Stevens v. N.Y. Racing Ass'n, Inc.*, 665 F. Supp. 164, 175 (E.D.N.Y. 1987) ("When some members of the press are given access to cover an event, the state cannot arbitrarily impose limits on other press representatives' access to the news.").

The government has opened the White House Press Forum to the press and may not now selectively restrict access based on the viewpoints of reporters or their news organizations.

C. When the Government Chooses Who Asks the Questions, the Public Receives Only the Government's Favored Views.

The press serves a unique role in democratic society of filtering, packaging, and curating speech, including by fact checking information shared by the government and by soliciting information from the government for the benefit of the public. There is an acute value in the press asking the questions that government officials may not want to be asked. Allowing the government to filter the information reaching the public by only allowing those members of the press who report according to the President's preferences is anathema to democratic self-governance and threatens the very foundations of the First Amendment. *See Cuomo*, 570 F.2d at 1083 ("We rather think that the danger would be that those of the media who are in opposition or who the candidate thinks are not treating him fairly would be excluded. And thus we think it is the public which would lose.").

By controlling press access to the White House Press Forum, the Policy allows the government to control the information that reaches the public and undermines the press's unique role of determining what information is worthy of reporting to the public. That is precisely the

kind of "authoritative selection" that the First Amendment protects against. *Sullivan*, 376 U.S. at 270. The government is not permitted to "affect the content or tenor of the news by choreographing which news organizations have access to relevant information." *Huminski v. Corsones*, 396 F.3d 53, 84 (2d Cir. 2005) (quoting *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986)). The Policy does exactly that and is thus plainly unconstitutional. *Cf. Cohen v. California*, 403 U.S. 15, 24 (1971) ("[F]ree expression . . . in a society as diverse and populous as ours . . . is designed . . . [to] put[] the decision [about] what views shall be voiced largely into the hands of each of us, . . . in the belief that no other approach would comport with the premise . . . upon which our political system rests.").

The Supreme Court has cautioned that "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion[.]" *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The *Barnette* Court further explained that "[f]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." *Id*. A policy that excludes journalists because the President disagrees with their reporting strikes directly at that principle. The Policy transforms access to the White House Press Forum into a government tool to control the speech of news organizations and to shape the information that is received by the public.

IV. INDEPENDENT LISTENER STANDING IS NECESSARY WHERE GOVERNMENT PRESSURE MAY CHILL THE PRESS.

Relying on speakers alone to press First Amendment challenges risks allowing a grave constitutional injury to go unchallenged when government pressure discourages speakers from asserting their own rights. Independent listener standing is critical where, as here, government

pressure is directed at an intermediary through which listeners receive information. The right to receive information would mean little if the government could pressure speakers such that they fear challenging government actions, leaving injured public listeners unable to press their own rights. This case illustrates precisely why listeners possess independent interests under the First Amendment.

And, unlike in *Murthy v. Missouri*, 603 U.S. 43 (2024), where plaintiffs failed to demonstrate that the social media restrictions they faced were the product of the government's communications, the causal link between the Policy and limitations on the reporting available to Plaintiffs in this case could not be clearer. The White House has banned CNN, MS NOW, and POLITICO. Plaintiffs are directly denied their reporting and injured due to that ban. The White House has also threatened to ban other journalists and news outlets—including ABC, NBC, the New York Times, USA Today, and the Washington Post—demonstrating the likelihood of future harms.

A. The Policy Chills the Speech of Outlets That Have Not Yet Been Banned, and Public Listeners Bear that Loss.

The Policy has a clear chilling effect on those organizations that have been banned but reinstated, and even those that have not (yet) been excluded. *Pen Am. Ctr., Inc. v. Trump*, 448 F. Supp. 3d 309, 324 (S.D.N.Y. 2020) ("Defendant's actions have plausibly chilled the White House press corps' speech, the questions they ask Defendant and the reporting they consequently are able to publish. The chilling impedes Plaintiff's right to receive information."). But the First Amendment protects "the liberty to discuss publicly and truthfully all matters of public concern *without . . . fear of subsequent punishment*." *League of Women Voters of Cal.*, 468 U.S. at 381–82 (emphasis added) (quoting *Thornhill v. Alabama*, 310 U.S. 88, 101–02 (1940)). Listeners' rights may be impeded through governmental policies or actions that prompt a speaker to self-censor.

Although such censorship is "privately administered," it is "hardly less virulent" than direct censorship by the government because it nevertheless "would tend to restrict the public's access." *Smith v. California*, 361 U.S. 147, 154 (1959) (holding strict liability for selling obscene material violated First Amendment and would cause booksellers to indirectly restrict material available to the public).

Journalists and other news organizations that have not been banned or had their access revoked may nevertheless fear retribution. That fear arises not only from the fact of the bans on journalists who have engaged in speech which the President dislikes, but also from the government's explicit threats to enforce the Policy against other news organizations the President disfavors. *See* Mot. at 16–17. To maintain access to the White House Press Forum, those organizations may be discouraged from freely reporting the news and from exercising their editorial judgment. The resulting self-censorship chills the speech on which Plaintiffs rely for information about their government.

We have repeatedly seen this chain of events, where the government uses its leverage over intermediary institutions (such as media companies or law firms) to suppress the expression of others (journalists, late night hosts,[4] and attorneys). "'Jawboning'—coercing an intermediary to censor another's speech or association—is a particularly dangerous method of censorship because of its efficacy and efficiency: the government can target large intermediary organizations (such as universities) over which it has leverage (such as control over federal research funds) so as to silence large numbers of individuals and organizations over which the government has no such leverage (such as faculty, students, and their associations and expression)." Serena Mayeri and Amanda

[4] Nardine Saad and Regan Morris, *ABC Takes Jimmy Kimmel off air over Charlie Kirk comments*, BBC (Sept. 18, 2025), https://www.bbc.com/news/articles/c203n52x1y9o.

Shanor, *In the Name of Equality: The Assault on Civil Rights and Constitutional Democracy*, 40 Constitutional Commentary, 101, 190 (forthcoming, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5525141; *see also National Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175 (2024); *see also Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963); Evelyn Douek & Genevieve Lakier, *Title VI as a Jawbone*, Knight First Amend. Inst. (Sept. 26, 2024), https://knightcolumbia.org/blog/title-vi-as-a-jawbone.

Many law firms targeted by executive order entered into agreements that severely limited the constitutionally-protected expression of their attorneys rather than challenging the orders,[5] as have many prominent universities.[6] Protection of the First Amendment cannot be left solely to intermediaries that may not be able or courageous enough to withstand government coercion.

B. Listener Standing Is Essential Because the Government Can Chill Speech by Pressuring News Organizations in Ways Beyond the Policy.

Listener standing is necessary because government officials possess numerous means of exerting pressure on news organizations, including regulatory scrutiny or other forms of retaliation. Mot. at 18 n.3. The First Amendment recognizes that government coercion of this type, whether direct or indirect, causes constitutional injury. *See Vullo*, 602 U.S. at 191; *Okwedy v. Molinari*, 333 F.3d 339, 343–44 (2d Cir. 2003) (noting that where a public official "threatens to employ

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[5] Eric Tucker, *Trump Reaches Deals with 5 Law Firms, Allowing Them to Avoid Prospect of Punishing Executive Orders*, AP (Apr. 11, 2025), https://apnews.com/article/trump-law-firms-executive-order-fe8f38a61cf77c5bb6add1315f5f96f1.

[6] *E.g.*, U.S. Dep't of Educ., DOJ, HHS, ED, and GSA Announce Initial Cancellation of Grants and Contracts to Columbia University Worth $400 Million (Press Release, Mar. 7, 2025), https://www.ed.gov/about/news/press-release/doj-hhs-ed-and-gsa-announce-initial-cancelation-of-grants-and-contracts-columbia-university-worth-400-million; U.S. Dep't of Educ., Secretary McMahon Statement on Columbia University Deal (Jul. 23, 2025), https://www.ed.gov/about/news/press-release/secretary-mcmahon-statement-columbia-university-deal; Fact Sheet: President Donald J. Trump Secures Major Settlement with Columbia University (Jul. 24, 2025), https://www.whitehouse.gov/fact-sheets/2025/07/19853/.

coercive state power to stifle protected speech," that threat "violates a plaintiff's First Amendment rights, regardless of whether the threatened punishment comes in the form of the use (or, misuse) of the defendant's direct regulatory or decisionmaking authority over the plaintiff, or in some less-direct form"). In the face of these threats, news organizations may be discouraged from pressing their own First Amendment rights, and instead comply with the government's editorial preferences in order to maintain access—to the public's detriment.

When government pressure can deter speakers from challenging speech-infringing actions, listeners may be best positioned to vindicate the constitutional right. Listeners' challenges are necessary to ensure the vindication of vital First Amendment interests—and, ultimately, our democratic system of government.

CONCLUSION

For the foregoing reasons, Amici respectfully request that the Court grant Plaintiffs' Motion for a Preliminary Injunction.

Dated: New York, New York
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Respectfully submitted,

/s/ Noam Biale

Noam Biale
Douglas Jensen
Grace Coleman
SHER TREMONTE LLP
90 Broad Street, 23rd Floor
New York, New York 10004
Tel.: (212) 202-2600
Fax: (212) 202-4156
nbiale@shertremonte.com

Attorneys for Amici Curiae

CERTIFICATION OF COMPLIANCE

The undersigned counsel of record for Amici Curiae certifies that the foregoing brief complies with the 8,750-word limit set forth in Rule 7.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York. The foregoing brief contains 5,153 words, excluding those portions of the brief excluded from the count by Rule 7.1, according to the Word Count feature on Microsoft Word.

Dated: November 2, 2026
New York, New York

/s/ Noam Biale
Noam Biale

APPENDIX A*

Floyd Abrams	Founder of the Floyd Abrams Institute for Freedom of Expression Yale Law School Author, *The Soul of the First Amendment* (Yale U. Press 2017)
Vincent Blasi	Coliss Lamont Professor Emeritus of Civil Liberties Columbia Law School
Erin Carroll	Professor of Law Georgetown University Law Center
Erwin Chemerinsky	Dean and Jesse H. Choper Distinguished Professor of Law University of California Berkeley Law School
David Cole	The Honorable George J. Mitchell Professor in Law and Public Policy Georgetown University Law Center
RonNell Andersen Jones	University Distinguished Professor and Lee E. Teitelbaum Chair in Law University of Utah
Christina Koningisor	Professor of Law and Harry & Lillian Hastings Research Chair University of California College of Law, San Francisco
Seth Kreimer	Kenneth W. Gemmill Professor of Law University of Pennsylvania Carey Law School
Genevieve Lakier	Professor of Law & Herbert and Marjorie Fried Teaching Scholar University of Chicago Law School
Helen Norton	University Distinguished Professor and Rothgerber Chair in Constitutional Law University of Colorado School of Law
Robert Post	Former Dean and Sterling Professor of Law Yale Law School
Amanda Shanor	Associate Professor and Wolpow Family Faculty Scholar The Wharton School of the University of Pennsylvania
Geoffrey Stone	Former Dean and Edward H. Levi Distinguished Service Professor University of Chicago Law School

* Titles and institutional affiliations appear for identification purposes only.

Nadine Strossen	John Marshall Harlan II Professor of Law Emerita New York Law School
Rebecca Tushnet	Frank Stanton Professor of the First Amendment Harvard Law School
Laura Weinrib	Fred N. Fishman Professor of Constitutional Law Harvard Law School
Sonja West	Otis Brumby Distinguished Professor in First Amendment Law University of Georgia School of Law