UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DEEP SOUTH TODAY, *d/b/a* VERITE NEWS, GANNETT CO., INC., GRAY LOCAL MEDIA, INC., NEXSTAR MEDIA, INC., SCRIPPS MEDIA INC., and TEGNA INC.,

Plaintiffs,

v.

LIZ MURRILL, *in her official capacity as Attorney General of Louisiana*, ROBERT P. HODGES, *in his official capacity as Superintendent of the Louisiana State Police*, and HILLAR C. MOORE, III, *in his official capacity as District Attorney of East Baton Rouge Parish*,

Defendants.

CASE NO. 3:24-cv-00623

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

More than fifty years ago, the Supreme Court held that a statute that "says that a person may stand on a public sidewalk . . . only at the whim of any police officer" would be so flagrantly unconstitutional as to "need[] no demonstration." *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90 (1965). Louisiana has enacted that law, vesting officers with standardless discretion to prevent the press and public from approaching near enough to document their official duties. *See* La. Rev. Stat. § 14:109 ("HB 173" or the "Act"). Because the First Amendment makes clear that the right to gather news cannot be conditioned on the arbitrary "moment-to-moment judgment of the policeman on his beat," *Kolender v. Lawson*, 461 U.S. 352, 360 (1983) (citation omitted), this Court should enjoin the Act's enforcement.

Effective August 1, 2024, the Act criminalizes "knowingly or intentionally approach[ing] within twenty-five feet of a peace officer who is lawfully engaged in the execution of his official duties after the peace officer has ordered the person to stop approaching or to retreat." La. Rev. Stat. § 14:109(A). But because Louisiana law already prohibits conduct that obstructs officers' duties, *see* La. Rev. Stat. § 14:329, the law's "only evident purpose" is "to reach expressive activity that does not involve physical interference," *Brown v. Kemp*, 86 F.4th 745, 782 (7th Cir. 2023). In other words, the statute is an obvious effort to circumvent the "First Amendment right to record the police." *Turner v. Lieutenant Driver*, 848 F.3d 678, 688 (5th Cir. 2017). But "[t]he Constitution deals with substance, not shadows," *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325 (1866), and Louisiana's sleight of hand does nothing to cure the Act's "ever-present potential for arbitrarily suppressing First Amendment liberties," *Shuttlesworth*, 382 U.S. at 91.

The Act violates the Constitution in multiple respects. For one, it violates the First Amendment as applied to Plaintiffs' peaceful, nonobstructive newsgathering in public places.

"[A]n inhibition of press news-gathering rights must be necessitated by a compelling governmental interest, and . . . narrowly tailored to serve that interest," *In re Express-News Corp.*, 695 F.2d 807, 808–09 (5th Cir. 1982) (citation and internal quotation marks omitted), but documenting newsworthy events where peace officers happen to be present does not "impede the [officers'] ability to perform their duties," even when an individual is "clearly close." *Perkins v. Hart*, No. 22-30456, 2023 WL 8274477, at *7 (5th Cir. Nov. 30, 2023). Thus, as applied to "the particular speech plaintiffs propose to undertake," *Holder v. Humanitarian Law Project*, 561 U.S. 1, 36 (2010), the Act advances no valid interest.

The Act is likewise unconstitutional on its face. Because "the First Amendment protects conduct and activities necessary for expression," it also protects "approaching" newsworthy events to observe and document them. *Brown*, 86 F.4th at 779. Here the Act, in its "inevitable effect," *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565 (2011) (citation omitted), imposes content-based burdens designed to chill newsgathering and speech about policing and, accordingly, it cannot survive strict scrutiny. Indeed, even if the Act could be construed as a time, place, and manner restriction, or a law that also regulates conduct, it still could not survive any level of constitutional scrutiny because it "vests unbridled discretion in a government official over whether to permit or deny expressive activity." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 755 (1988). And for much the same reason, the Act is void for vagueness twice over: It "fail[s] to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits," and it "authorize[s] and even encourage[s] arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (plurality opinion).

Because the Act cannot be reconciled with the Constitution, Plaintiffs—organizations that gather and report the news in Louisiana—respectfully move this Court to enjoin it.

BACKGROUND

I. Louisiana adopts the Act.

On May 24, 2024, Louisiana Governor Jeff Landry signed into law HB 173, which, in relevant part, makes it a criminal offense to "knowingly or intentionally approach within twenty-five feet of a peace officer who is lawfully engaged in the execution of his official duties after the peace officer has ordered the person to stop approaching or to retreat." La. Rev. Stat. § 14:109(A). The Act's definition of "peace officer" sweeps in a broad range of law enforcement agencies, *see id.* § 14:109(B) (cross-referencing La. Rev. Stat. § 14:112.4(B)(2) and La. Rev. Stat. § 40:2402(3)), including troopers of the Louisiana State Police, *see* La. Rev. Stat. § 40:2402(3)(a) (defining "peace officer" to include "any employee of the state . . . responsible for the prevention or detection of crime"); La. Rev. Stat. § 40:1379 (State Police "shall prevent and detect crime"). The Act's only affirmative defense provides that no liability attaches "if the defendant can establish that the lawful order or command was neither received nor understood by the defendant nor capable of being received or understood under the conditions and circumstances that existed at the time of the issuance of the order." La. Rev. Stat. § 14:109(C). Otherwise, a violation of the statute is punishable by fines and imprisonment. *Id.* § 14:109(D).

Addressing HB 173's effect on the public's ability to record law enforcement, the Act's sponsor, Rep. Bryan Fontenot, suggested without evidence that "there is really nothing within a twenty-five feet span that someone couldn't pick up on video if they were at five feet." Hearing on HB 173 Before the H. Comm. on the Administration of Criminal Justice, at 1:40:35–45, 2024 Reg. Sess. (La. Mar. 26, 2024), https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2024/mar/0326_24_CJ. But as Rep. Fontenot went on to acknowledge, some details

would be impossible to obtain while complying with the Act: "We aren't trying to read the officer's name on his uniform." *Id.* at 1:44:55–1:45:05.

The Act went into effect on August 1, 2024. *See* La. Const. art. III, § 19.

II. Plaintiffs' newsgathering regularly brings their journalists in close proximity to peace officers performing official duties.

Plaintiffs are organizations that gather and report news in Louisiana on a regular basis. Deep South Today, *d/b/a* Verite News ("Verite"), Gannett Co., Inc. ("Gannett"), Gray Local Media, Inc. ("Gray"), Nexstar Media, Inc. ("Nexstar"), Scripps Media Inc. ("Scripps"), and TEGNA Inc. ("TEGNA") are all in the business of regularly gathering and publishing newsworthy information, and all employ professional journalists assigned to cover the activities of Louisiana law enforcement, including the Louisiana State Police, on a regular, ongoing basis.[1]

At each year's Carnival, for instance, journalists and members of the public from around the state cover the celebration of Mardi Gras from twelfth night to Ash Wednesday. On Lundi Gras and Mardi Gras—in addition to the weekends prior that include permitted and organized celebratory parading on Louisiana's public streets—Plaintiffs' reporters repeatedly come into close contact with peace officers from a range of law enforcement agencies that provide crowd control and direct traffic for the festivities. *See* Kenny Kuhn, *WWL Mardi Gras Parade Coverage from New Orleans*, 4WWL (Feb. 13, 2024), https://perma.cc/4W3Z-2VQL.

Plaintiffs' journalists likewise routinely encounter members of the State Police in Baton Rouge when covering press conferences held by the Governor, *see* Ange Toussaint, *Governor Jeff Landry Signs Education Reform Bill*, KATC (June 19, 2024), https://perma.cc/J658-655E, developments at the statehouse, Michael Scheidt, *Louisiana Gov. Jeff Landry Signs Health Care*

[1] A full list of Plaintiffs' individual stations, newspapers, and other properties in Louisiana that are now regulated by the Act is set forth in the Complaint. *See* Complaint ¶¶ 17–22 (ECF No. 1).

Bills Into Law, WGNO (June 25, 2024), https://bit.ly/3S9ivmF, and Louisiana State University (LSU) football games where State Police troopers provide security, Jessica Knox, *Heavy Police Presence Planned for LSU vs. Southern Game*, BRProud (Sept. 8, 2022), https://bit.ly/3LoBm9j.

Civil disturbances also bring Plaintiffs' reporters into close contact with peace officers. For example, Plaintiffs reported extensively on protests in June 2020,[2] and more recently covered the clearing of a pro-Palestine encampment on the campus of Tulane University. *See, e.g.*, Raeven Poole, *Law Enforcement Agencies Raid Pro-Palestine Protest on Tulane University Campus*, WGNO (May 1, 2024), https://bit.ly/3XYmE0o; *see also* Michelle Liu, *After Protest Crackdown, Some Students and Faculty Criticize Tulane's Approach to Pro-Palestinian Speech*, Verite News (May 6, 2024), https://perma.cc/Z6ZB-DP82. All of that coverage required close contact with officers and often relied on videos or photographs captured within twenty-five feet.

A broad range of other assemblies, rallies, and newsworthy public events similarly bring Plaintiffs' reporters into close contact with Louisiana law enforcement on a routine basis—and will continue to do so for the foreseeable future. *See, e.g.*, Jordan Lippincott, *Preparations Underway for Super Bowl LIX in New Orleans*, WGNO (Feb. 21, 2024), https://bit.ly/3WoThlF. And reporting within a twenty-five-foot radius of law enforcement officers performing official responsibilities is likewise essential in other contexts, including at crime scenes[3] and in interviews or press conferences held by public officials or members of law enforcement.[4]

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[2] *See, e.g.*, Emily Enfinger, *Hundreds Participate in Shreveport Black Lives Matter March*, Shreveport Times (May 31, 2020), https://perma.cc/BVK7-8TZ3; *Police in Support of Peaceful Protests Planned in St. Martinville*, KATC (July 9, 2020), https://perma.cc/7EUC-B677; *NOPD Uses Tear Gas to Disperse Protesters After Nights of Peaceful Marches*, 4WWL (June 3, 2020), https://perma.cc/XWJ9-8AM9; Peyton LoCicero Trist, *New Orleanians Rally for Justice*, WGNO (May 31, 2020), https://bit.ly/3zHXXLx.

[3] *See, e.g.*, Curt Sprang, *Two Dead in Mandeville Following Welfare Check Turned Police Shooting*, WGNO (July 6, 2024), https://bit.ly/4f5TcLS; Mario Villafuerte & Makenzie Boucher, *Cat Stands Guard at Shreveport Crime Scene*, Shreveport Times (Apr. 7, 2022), https://bit.ly/4cT5GFj.

[4] *See, e.g.*, Michael Scheidt & Trinity Velazquez, *Police Chief Puts More Cops on the Street After Baton Rouge Had 28 Shootings in March*, BRProud (Mar. 25, 2024), https://www.brproud.com/news/local-

All told, in the course of their work, individual journalists employed by Plaintiffs may come into close contact with peace officers as often as once a day depending on the news cycle. Richard Erbach, News Director for Nexstar station WGNO, estimates that reporters and photojournalists in his newsroom will come "within twenty-five feet of law enforcement officers virtually every day for the foreseeable future." Decl. of Richard Erbach ("Erbach Decl.") ¶ 19; *see also* Decl. of Nicole Waivers ("Waivers Decl.") ¶ 6 (estimating that journalists for TEGNA station 4WWL are "in close contact with officers" covering crime scenes "multiple times a week"). And while Plaintiffs' journalists are "careful not to interfere with anything [law enforcement officers] are doing," their jobs often require them "to be as close as a few feet to record audio and put the mic as close as we can" in order to capture what individuals are saying. Decl. of Jazmin Thibodeaux Chretien ("Thibodeaux Decl.") ¶ 7; *see also* Decl. of Curtis Sprang ("Sprang Decl.") ¶ 4 ("When reporting on law enforcement, I try to get as close as I can without causing problems so that I can pick up good-quality audio of what the officer is saying.").

Based on their professional experience, Plaintiffs' journalists—whether they are taking photographs, recording video, or visually observing newsworthy events so they can report on them accurately—"need to be within a conversational distance" to hear when "a police officer is saying something to someone on a scene," Sprang Decl. ¶ 4, or to speak to potential sources, *see* Thibodeaux Decl. ¶ 5. To record audio that can be used in a broadcast, Plaintiffs' journalists estimate needing to be "within five feet." Decl. of Katherine Jane Fernelius ("Fernelius Decl.") ¶ 6; *see also* Erbach Decl. ¶ 8; Thibodeaux Decl. ¶ 7. And Plaintiffs' reporters likewise need to be as close as they can to get an unobstructed view of details like an officer's badge number or the

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news/crime/baton-rouge-police-discuss-recent-shootings-in-the-city/; Jazmin Thibodeaux, *Black History: LPD Remembers First Two African-American Officers on the Force*, KATC (Feb. 21, 2024), https://perma.cc/UDG2-5QZC; Clarissa Sosin & Daryl Khan, *In the Dark: Investigating Baton Rouge Police Department*, Verite News (2023), https://veritenews.org/in-the-dark-series/.

name on his uniform. *See* Fernelius Decl. ¶ 5; *see also* Erbach Decl. ¶ 8 (estimating that it is difficult to avoid an obstructed view from more than fifteen feet away). In the experience of Nicole Waivers, News Director for TEGNA station 4WWL in New Orleans, her journalists need to "capture what's happening" and "keep [their] camera[s] pointed in the direction of the action," even when working in close proximity to officers, in order to do their jobs effectively. Waivers Decl. ¶¶ 13–14. As Waivers puts it, "As journalists, we create the first record of history. We are responsible for giving the public a correct impression of what is happening." *Id.* ¶ 22.

III. The Act's impact on Plaintiffs' newsgathering.

Because Plaintiffs' journalists often are asked by law enforcement to move or step back while gathering the news—requests that were, until August 1, voluntary—they must now adjust their behavior to avoid the risk of arrest under the Act. Erbach, News Director at WGNO, estimates "that a member of the WGNO newsroom is . . . asked to step back or move away from an officer around once a week." Erbach Decl. ¶ 17. And in Plaintiffs' reporters' experience, peace officers often make such requests even where there is no risk of interference.

For example, in July, Patrick Thomas, Chief Photographer at WGNO, was "covering a crash scene in Jefferson Parish where police chased a suspect and ran the suspect off the road." Decl. of Patrick Thomas ("Thomas Decl.") ¶ 7. By the time Thomas arrived, "the police were putting the suspect in an ambulance" and "[t]he suspect was saying something about the police officers." Thomas "got closer to try to hear what was being said." *Id.* He "heard the suspect say that he had been punched in the mouth and tased six times, that he was a businessman just trying to collect scooters, and that 'not all Jefferson Parish officers are bad officers, just that one.'" *Id.* ¶ 8. After he heard the suspect criticize one of the arresting officers, "[a]n officer then came over and told me and another journalist from a different station to move back." *Id.* ¶ 9. Thomas and

the other journalist "both stepped back several feet, but the officer then asked [them] to move across the street on the other side of an active lane of traffic." *Id.* ¶ 10. Thomas "was reluctant to cross," both because of a "concern for [his] own safety," but also because he did not want his view of the scene to be obstructed. *Id.* The officer "was insistent," telling him "over and over again to cross the street, even though [he] was not interfering with anything that was happening at the scene." *Id.* Thomas believes the officer "ordered [him] to move back because the officer had a negative reaction to the suspect's criticism," *id.* ¶ 11, and recalled that "[t]he officer seemed ready to arrest me if he could find a reason to," *id.* ¶ 12. If the Act had been in effect, Thomas would have complied with the unwarranted requests rather than risk arrest. *Id.* ¶ 13.

Plaintiffs' journalists also must adjust the way they engage in newsgathering out of concern they will be unable to comply with HB 173 in practice. In newsroom discussions about the Act's impact, Plaintiffs' journalists have attempted—and struggled—to accurately estimate how far twenty-five feet is, *see* Waivers Decl. ¶ 16; Erbach Decl. ¶ 18; Thomas Decl. ¶ 15; Fernelius Decl. ¶ 15, and would not be able to reliably do so in the field, *see* Thomas Decl. ¶ 15; Fernelius Decl. ¶ 15; Thibodeaux Decl. ¶ 10. As a result, if an officer orders Plaintiffs' journalists "to move to a particular area and says that it is twenty-five feet away," they have "no good way of knowing if [the officer is] right or not," Thibodeaux Decl. ¶ 10.

Plaintiffs' newsroom directors also have struggled to provide guidance to their journalists regarding how to comply with the Act when physical obstacles would make it impossible, as in "a crowded situation like a parade." Waivers Decl. ¶ 18. For instance, Katie Fernelius, a reporter for Verite News, regularly covers activities of the New Orleans City Council and events in the French Quarter, but Fernelius does not know how she would comply with an order to stay twenty-five feet away in those spaces. Among other things, some rooms of the City Council's

chambers may be smaller than twenty-five feet wide, *see* Fernelius Decl. ¶ 10, and "streets in the interior of the French Quarter are 22 feet wide," U.S. Dep't of Transp., Primer for Improved Urban Freight Mobility and Delivery Operations, Logistics, and Technology Strategies (last visited Aug. 2, 2024), https://perma.cc/D4A8-KWS7.

In each situation, Plaintiffs' journalists must choose between complying with an order to stay back twenty-five feet—thereby losing their chance to gather newsworthy information—or facing arrest for being within twenty-five feet of a law enforcement officer. Fernelius Decl. ¶ 17. One of Plaintiffs' journalists, Curtis Sprang of WGNO, brought up an expression he has "heard often in Louisiana" that "[y]ou might beat the charge, but you won't beat the ride." Sprang Decl. ¶ 16. In other words, "[e]ven if criminal charges wouldn't stand up [in court]," disobeying an order by a peace officer means you "risk enduring the process of being handcuffed, transported in the back of a police car, and waiting in jail for hours." *Id.* Sprang said he does "not want to be in that situation just for doing [his] job, so [he] would comply with an officer's request to move even though [he is] not interfering with or obstructing officers, even if it means that [he] cannot gather the news." *Id.* Other journalists have likewise explained that the Act "will make [their] job[s] more dangerous" because they will not be able to get "close to see and hear what is going on" without facing "the risk of arrest." Thomas Decl. ¶ 17.

As a result, Plaintiffs' newsroom directors have advised their journalists to err on the side of caution and comply with any requests to move or step back, no matter how unnecessary or unwarranted. *See* Erbach Decl. ¶¶ 7–9; Waivers Decl. ¶ 18. In the words of KATC Senior Reporter Jazmin Thibodeaux, "Without HB 173, I would insist on my rights to gather news and record in public places in response to a request by a law enforcement officer that was unreasonable under the circumstances." Thibodeaux Decl. ¶ 10. "With HB 173, I would comply

to the best of my ability and stay a long distance away" because "I do not want to be arrested for doing my job." *Id.*

ARGUMENT

Plaintiffs are entitled to a preliminary injunction prohibiting enforcement of the Act. In First Amendment cases, "likelihood of success on the merits"—already "arguably the most important factor" in that analysis, *Netflix, Inc. v. Babin*, 88 F.4th 1080, 1099 (5th Cir. 2023)—is typically dispositive because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," and "[i]njunctions protecting First Amendment freedoms are always in the public interest," *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024) (citations omitted). Here, Plaintiffs are likely to succeed in demonstrating that the Act violates their rights under the First and Fourteenth Amendments, and a preliminary injunction would serve the public interest by safeguarding the function of a free press in Louisiana.

I. Plaintiffs are likely to succeed on the merits of their arguments that the Act violates the First and Fourteenth Amendments.

The Act violates the First Amendment both as applied to Plaintiffs' newsgathering, because reporting "that does not interfere with the police officers' performance of their duties is not reasonably subject to limitation," *Glik v. Cunniffe*, 655 F.3d 78, 84 (1st Cir. 2011), and on its face, because the Act "vests unbridled discretion in a government official over whether to permit or deny expressive activity," *City of Lakewood*, 486 U.S. at 755. The Act is likewise void for vagueness: Not only does it "fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits," *Morales*, 527 U.S. at 56 (plurality opinion), but also it "is so standardless that it authorizes or encourages seriously discriminatory enforcement," *United*

States v. Williams, 553 U.S. 285, 304 (2008). On each independent basis, Plaintiffs' constitutional claims are likely to succeed on the merits.

A. Plaintiffs have standing to challenge HB 173.

As a threshold matter, Plaintiffs have standing to challenge the Act. "It is not hard to sustain standing for a pre-enforcement challenge in the highly sensitive area of public regulations governing bedrock political speech." *Speech First, Inc. v. Fenves*, 979 F.3d 319, 331 (5th Cir. 2020), *as revised* (Oct. 30, 2020). In this posture, "chilling of speech because of the mere existence of an allegedly vague or overbroad statute can be sufficient injury to support standing," *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 660 (5th Cir. 2006), even if "a plaintiff does not intend to violate a policy," *Speech First*, 979 F.3d at 332 n.10, so long as they *do* intend "to engage in a course of conduct arguably affected with a constitutional interest" and "arguably proscribed" by the challenged statute, *id.* at 330 (citation and alteration omitted). In such circumstances, "when dealing with pre-enforcement challenges to recently enacted (or, at least, non-moribund) statutes that facially restrict expressive activity by the class to which the plaintiff belongs, courts will assume a credible threat of prosecution in the absence of compelling contrary evidence." *Id.* at 335 (citation omitted).

This standard is more than satisfied here. As to whether the activity arguably proscribed by the Act is affected with a constitutionally protected interest, the Fifth Circuit has made clear that the First Amendment safeguards "the right to gather news," *In re Express-News Corp.*, 695 F.2d at 809, including by capturing images, *see Nat'l Press Photographers Ass'n v. McCraw*, 90 F.4th 770, 789 (5th Cir. 2024), and by "[f]ilming the police" in particular, *Turner*, 848 F.3d at 689. And because "the First Amendment protects conduct and activities necessary for expression," it also protects "approaching" newsworthy events to observe and document them.

Brown, 86 F.4th at 779; *see also Jordan v. Jenkins*, 73 F.4th 1162, 1169–70 (10th Cir. 2023) (same).

The Act makes all of that expressive activity criminal if within twenty-five feet of a peace officer unless an officer opts in his or her sole, unfettered discretion to allow it—putting Plaintiffs' journalists "in danger of arrest in many of the circumstances [they] find [them]selves in on a weekly basis." Fernelius Decl. ¶ 14. And the Supreme Court has made clear, on that footing, that Plaintiffs need not "first expose [themselves] to *actual* arrest or prosecution to be entitled to challenge a statute that [they] claim[] deters the exercise of [their] constitutional rights." *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (emphasis added); *see also City of Lakewood*, 486 U.S. at 755–56 (pre-enforcement challenge lies where a law "allegedly vests unbridled discretion . . . over whether to permit or deny expressive activity" where officials have yet to deny such permission). The prospect that receiving an instruction to move or step back will shut down otherwise-lawful reporting is enough, and the fact that Plaintiffs' journalists are forced to err on the side of caution for fear of arrest when gathering information near peace officers is, itself, the "chilling" injury the First Amendment condemns. *Carmouche*, 449 F.3d at 660; *see* Thibodeaux Decl. ¶ 10; Thomas Decl. ¶ 17; Fernelius Decl. ¶ 17; Sprang Decl. ¶ 16.

That injury is fairly traceable to Defendants, who are charged by state law with enforcing the Act, and a preliminary injunction would redress those injuries for much the same reason. As the Attorney General of Louisiana, Defendant Liz Murrill is "the chief legal officer of the state" and may, "upon the written request of a district attorney, . . . advise and assist in the prosecution of any criminal case." La. Const. art. IV, § 8. What's more, in February, Murrill signed a cooperative endeavor agreement with the Orleans Parish District Attorney that gives the Attorney General the authority "to prosecute any and all criminal matters in Orleans Parish

resulting from an arrest or investigation conducted by Louisiana State Police." Metia Carroll, *Louisiana AG Liz Murrill and Orleans DA Jason Williams Execute Agreement to Make New Orleans Safe*, WDSU (Feb. 6, 2024), https://perma.cc/L2Y6-YEA7. She is therefore charged with enforcing the Act when State Police make arrests pursuant to it in New Orleans, where Plaintiffs' journalists routinely encounter State Police. *See, e.g.*, Waivers Decl. ¶¶ 10–12.

Defendant Hillar C. Moore, III, has "charge of every criminal prosecution by the state in his district" as District Attorney for East Baton Rouge Parish. La. Const. art. V, § 26. Plaintiffs' work often brings their journalists within twenty-five feet of peace officers in his district, covering events from LSU football games to happenings at the state capitol, *see* Erbach Decl. ¶ 6; Thibodeaux Decl. ¶ 6; Waivers Decl. ¶ 5, and Moore is charged with enforcing the Act in those circumstances. Defendant Robert P. Hodges is the Superintendent of the Louisiana State Police, and the troopers under his supervision and control have a duty to "enforce the criminal and traffic laws of the state"—including the Act. La. Rev. Stat. § 40:1379(A). Plaintiffs' journalists routinely encounter State Police in the course of doing their jobs, *see* Waivers Decl. ¶ 8; Fernelius Decl. ¶ 4; Sprang Decl. ¶ 3, and routinely run the risk they will enforce the Act. Accordingly, preliminary injunctive relief against each Defendant in his or her official capacity would redress the Act's chilling effect on Plaintiffs' First Amendment rights.

B. The Act violates the First Amendment as applied to Plaintiffs' peaceful, nonobstructive newsgathering within twenty-five feet of a peace officer.

As detailed above, Plaintiffs' reporters regularly gather and report the news within twenty-five feet of a peace officer performing his or her duties—documenting events they could neither reliably see, hear, nor record if forced to retreat as far as the Act requires. The Act violates the First Amendment as applied to their peaceful, nonobstructive newsgathering.

Where plaintiffs bring an as-applied, pre-enforcement challenge to a statute, a court must first ask whether "as applied to plaintiffs the conduct triggering coverage under the statute" implicates the First Amendment, *Humanitarian Law Project*, 561 U.S. at 28, and, next, whether the statute satisfies the relevant standard of review as applied to "the particular speech plaintiffs propose to undertake," *id.* at 36. Both steps of that analysis are straightforward in this case.

As to the first question, as discussed above, the First Amendment protects "the right to gather news," *In re Express-News Corp.*, 695 F.2d at 809, and with it "approaching" newsworthy events in order to document them, *Brown*, 86 F.4th at 779 (prohibition on "approaching" hunters directly regulated First Amendment activity). Necessarily so; as the Tenth Circuit has explained: "If police could stop criticism or filming by asking onlookers to leave, then this would allow the government to simply proceed upstream and dam the source of speech—i.e., it would allow the government to bypass the Constitution." *Jordan*, 73 F.4th at 1169–70 (citation, internal quotation marks, and alterations omitted). Plaintiffs' "conduct triggering coverage under the statute" in this case—being within twenty-five feet of peace officers in order to gather news—is therefore pure First Amendment activity. *Humanitarian Law Project*, 561 U.S. at 28.

The Act cannot survive any plausibly relevant standard of review as applied to Plaintiffs' newsgathering. To start with the elephant in the room: The Act is content-based in its "inevitable effect," *Sorrell*, 564 U.S. at 565 (citation omitted); it is designed to and inevitably will discourage "[f]ilming the police," *Turner*, 848 F.3d at 689. The Seventh Circuit's recent decision in *Brown v. Kemp*, 86 F.4th 745 (7th Cir. 2023), is instructive on that issue. There, the court considered a First Amendment challenge to a Wisconsin ban on—among other things—"approaching" hunters. *Id.* at 753. While the state defended the law by arguing it regulated only obstructive conduct, the court noted that pre-existing law "already encompassed physical

interference," such that the new law's "only evident purpose" was "to reach expressive activity" in order "to burden a narrow category of disfavored speech." *Id.* at 782. The statute was therefore content- and viewpoint-based. *See id.* The same is true here. Because Louisiana law already prohibits conduct that in fact interferes or threatens to interfere with law enforcement, *see* La. Rev. Stat. § 14:329, the Act's sole purpose is to criminalize First Amendment-protected activity that does *not* interfere with law enforcement concerning a specific topic: peace officers' performance of their duties. *See City of Houston v. Hill*, 482 U.S. 451, 459–61 (1987) (rejecting characterization of ordinance prohibiting interference with police as "content-neutral" where "the *enforceable* portion of the ordinance" in practice "prohibit[ed] verbal interruptions of police officers" (emphasis added)).

The Act's application to Plaintiffs' newsgathering cannot survive the "strict scrutiny" of "content-based restrictions on speech" required by the First Amendment—a standard that "requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015) (citation omitted). For one, criminalizing peaceful, nonobstructive newsgathering advances no legitimate—let alone compelling—government interest. *See, e.g.*, *Glik*, 655 F.3d at 84 (holding that "peaceful recording . . . that does not interfere with the police officers' performance of their duties is not reasonably subject to limitation"). Nor is the Act narrowly tailored. The First Amendment prohibits the government from "regulat[ing] expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals," *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (citation omitted), but the Act's scope is not tethered to any legitimate aim. On the contrary, the Act empowers officers to order Plaintiffs' journalists to move for any reason or no reason at all—including because those officers want to control or

curtail the content of Plaintiffs' reporting. And a statute that "vests unbridled discretion in a government official over whether to permit or deny expressive activity" is never adequately tailored. *City of Lakewood*, 486 U.S. at 755.

Even setting that point aside, the statute is also overbroad because twenty-five feet is far further away than necessary to protect any legitimate interest. As other courts have explained, even an individual recording from "roughly ten feet away," *Glik*, 655 F.3d at 80, is operating at "a comfortable remove," *id.* at 84 (citation omitted). Indeed, the Fifth Circuit recently held that a man filming from six feet away was "clearly" protected by the First Amendment. *Perkins*, 2023 WL 8274477, at *7; *see also* Richard A. Webster, *Video of Mother's Arrest Raises Questions About 25-Foot Buffer Law*, La. Illuminator (June 9, 2023), https://perma.cc/L4TC-YADT (noting that the plaintiff in *Perkins* was six feet away and defendants had unsuccessfully argued for a twenty-one-foot buffer). Louisiana lawmakers made no findings to explain their choice of a much more expansive prohibition—a problem compounded by the fact that, under the Act's plain text, multiple officers on the same scene are authorized to issue overlapping orders. *See* Erbach Decl. ¶ 18; Thomas Decl. ¶ 16.

But even if the Act's application to Plaintiffs' newsgathering could be characterized as content-neutral, the analysis would differ little. Even content-neutral orders restricting newsgathering must, at minimum, be "narrowly tailored to serve a significant government interest," *Reed v. Lieurance*, 863 F.3d 1196, 1211 (9th Cir. 2017), and must leave open "alternative observation opportunities" to document the event at issue, *id.* at 1212; *see also In re Express-News Corp.*, 695 F.2d at 808–09 ("[A]n inhibition of press news-gathering rights must be necessitated by a compelling governmental interest, and . . . narrowly tailored to serve that interest." (citation and internal quotation marks omitted)). Simply put, adjusting the standard of

review does not solve Louisiana's fundamental problem: It needs some legitimate reason to criminalize Plaintiffs' journalism, but it has none. There is no valid state interest in prohibiting newsgathering that is "not disruptive of public order or safety, and carried out by people who have a legal right to be in a particular public location and to watch and listen to what is going on around them." *Am. C.L. Union of Ill. v. Alvarez*, 679 F.3d 583, 606 (7th Cir. 2012). And even if there were, Louisiana still would not be able to find a basis for choosing a twenty-five-foot buffer when the Fifth Circuit has held that six feet is enough. *See Perkins*, 2023 WL 8274477, at *7; Webster, *supra*.

Moreover, as the practical experience of Plaintiffs' journalists underlines, the Act's twenty-five-foot perimeter does not leave open "alternative observation opportunities." *Lieurance*, 863 F.3d at 1212. Rep. Fontenot's assertion that "there is really nothing within a twenty-five feet span that someone couldn't pick up on video if they were at five feet," Hearing on HB 173, *supra*, at 1:40:35–45, is simply incorrect. It will often—or even typically—be the case that twenty-five feet is too far for journalists to obtain a clear line of sight to observe and record newsworthy events, especially in crowded, tumultuous situations like protests, parades, or major sporting events. *See* Erbach Decl. ¶ 6; Sprang Decl. ¶ 3; Thomas Decl. ¶ 4; Fernelius Decl. ¶ 9. That distance is likewise far too great to reliably capture audio or interview sources on the scene. *See* Thibodeaux Decl. ¶ 7; Sprang Decl. ¶ 4; Fernelius Decl. ¶¶ 5–6. As a result, the Act's inevitable effect will be to foreclose newsgathering and reporting about newsworthy matters in a broad range of situations involving members of law enforcement.

The Act's sponsor, Rep. Fontenot, effectively conceded as much in insisting that the press and public "aren't trying to read the officer's name on his uniform," and therefore need not be close enough to see it. *See* Hearing on HB 173, *supra*, at 1:44:55–1:45:05. This, too, is

incorrect. Plaintiffs' journalists need to be within close proximity of officers in order to verify details like names and badge numbers, *see* Fernelius Decl. ¶ 5, without which it would be impossible to hold officers' accountable for their conduct on duty, *see Fields v. City of Phila.*, 862 F.3d 353, 360 (3d Cir. 2017) (noting that the right to document policing is necessary to "identify and discipline problem officers"); *see also* Zipporah Osei et al., *We Are Tracking What Happens to Police After They Use Force on Protestors*, ProPublica (July 29, 2020), https://perma.cc/D63N-EKSQ. But as the legislative history illustrates, the Act ultimately rests on a basic quarrel with the proposition that the First Amendment "guards against the miscarriage of justice by subjecting the police"—and the important public powers they exercise—"to extensive public scrutiny." *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966).

For each of these reasons, Plaintiffs are likely to succeed on the merits of their claim that the Act violates the First Amendment as applied to their nonobstructive newsgathering.

C. The Act violates the First Amendment on its face.

The Act also violates the First Amendment on its face. Even setting aside the fact that the Act can be triggered by "approaching" newsworthy events "to carry out plaintiffs' protected monitoring and recording," *Brown*, 86 F.4th at 779, all of the Act's applications implicate the First Amendment because even if it were interpreted to "say[] nothing about speech on its face," the statute nevertheless "restricts access to traditional public fora and is therefore subject to First Amendment scrutiny," *McCullen*, 573 U.S. at 476. As a result, the law is invalid on its face unless Louisiana can carry its burden to justify it under strict or—at a minimum—intermediate scrutiny. *See id.* (invalidating buffer-zone law on its face under intermediate scrutiny); *see also Ashcroft v. Am. C.L. Union*, 542 U.S. 656, 666 (2004) (even in preliminary-injunction posture, "the Government bears the burden of proof" on the constitutionality of statutes that restrict First

Amendment activity). Louisiana can make neither showing here because the Act "vests unbridled discretion in a government official over whether to permit or deny expressive activity," including Plaintiffs' lawful newsgathering. *City of Lakewood*, 486 U.S. at 755.

a. The Act is a content-based prohibition that fails strict scrutiny.

As already previewed above, the Act imposes content-based burdens on expression about policing in particular. Because pre-existing Louisiana law "already encompassed physical interference" with peace officers, the Act's "only evident purpose" is "to reach expressive activity" in order "to burden a narrow category of disfavored speech." *Brown*, 86 F.4th at 782. What's more, in order "[t]o qualify as content-neutral," a law "cannot invest unbridled discretion" that might be *used* to discriminate on the basis of content. *Smith v. Exec. Dir. of Ind. War Mem'ls Comm'n*, 742 F.3d 282, 289 (7th Cir. 2014) (citation and internal quotation marks omitted); *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 133 n.10 (1992) ("[T]he success of a facial challenge on the grounds that an ordinance delegates overly broad discretion to the decisionmaker rests not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything in the ordinance preventing him from doing so."). The Act has just that defect. In each respect, it triggers strict First Amendment scrutiny.

The Act cannot survive that review because it is not—by any stretch of the imagination—"narrowly tailored" to "a compelling governmental interest." *Town of Gilbert*, 576 U.S. at 171. Preventing members of the press and public from standing "close" to peace officers is not, without more, an interest that justifies restricting expression. *Perkins*, 2023 WL 8274477, at *7. And the Act entirely fails to channel officers' discretion toward any other valid goal. It does not require, for instance, that an individual's presence "impede the [officers'] ability to perform their duties," *id.*, or that the individual intend to interfere. On the contrary, the Act "vests unbridled

discretion in a government official over whether to permit or deny expressive activity," *City of Lakewood*, 486 U.S. at 755, empowering officers to issue orders on their own say-so. And as already explained above, the Act's twenty-five-foot perimeter is far broader than necessary to accommodate any legitimate governmental interest.

Neither can Louisiana demonstrate that the Act is "the least restrictive means to further public safety," or any other legitimate goal. *Blitch v. City of Slidell*, 260 F. Supp. 3d 656, 670 (E.D. La. 2017) (citation and internal quotation marks omitted). To the extent the law is justified by concerns about safety or obstruction, Louisiana has a raft of other statutes on the books that make interfering with or disrupting police engaged in official business a crime. *See, e.g.*, La. Rev. Stat. § 14:329; La. Rev. Stat. § 14:329.3. Against that backdrop, Louisiana cannot explain why "available generic criminal statutes" fail to address whatever government interest the Act notionally serves. *McCullen*, 573 U.S. at 492.

b. The Act also would fail intermediate scrutiny.

Even if the Act were construed as a time, place, or manner restriction, or a law that also targets conduct, *see Nat'l Press Photographers Ass'n*, 90 F.4th at 790 ("conduct regulations" that have "an incidental effect on speech" and "time, place, and manner restrictions" both "fall under the umbrella of intermediate scrutiny"), it would remain invalid on its face for much the same reason: It prohibits with sweeping breadth expressive activity that poses no risk of obstruction.

The Seventh Circuit's decision in *Bell v. Keating*, 697 F.3d 445 (7th Cir. 2012), is instructive. There, the court considered a facial challenge to a content-neutral ordinance that criminalized "knowingly . . . [f]ail[ing] to obey a lawful order of dispersal" by a law enforcement officer "where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause substantial harm or serious inconvenience, annoyance or

alarm." *Id.* at 450 (quoting Chicago Municipal Code § 8-4-010(d)). The court explained, as "[t]he Supreme Court has held," that "when individuals ordered to disperse or move along manifest a 'bona fide intention to exercise a constitutional right,' a city may criminalize their refusal only when its 'interest so clearly outweighs the [individuals'] interest sought to be asserted that the latter must be deemed insubstantial.'" *Id.* at 459 (quoting *Colten v. Kentucky*, 407 U.S. 104, 111 (1972)). In other words, the government's interest "prevails only if the nuisances at issue risk substantial harm or if dispersal is otherwise *necessary*." *Id.* Applied to the ordinance before it, the Seventh Circuit concluded that orders to disperse on the basis of "serious inconvenience" or "alarm" violated the First Amendment because they could be issued "to individuals exercising protected First Amendment rights" without any showing that dispersal would be "necessary." *Id.*

HB 173 goes even further than the ordinance in *Bell*, containing no standard whatsoever—not even one as vague as "serious inconvenience"—that might limit when an officer may issue an order. And where the Seventh Circuit faulted the ordinance in *Bell* for requiring "inconvenience" without clarifying the *kind* that might give rise to a valid order to disperse, the Act fails to require any (even minimal) disruption to law enforcement activities. 697 F.3d at 459. It is triggered simply by a law enforcement officer's say-so. Thus, to an even greater degree than the ordinance struck down in *Bell*, the Act "lacks the necessary specificity and tailoring to pass constitutional muster, and . . . substantially impacts speech." *Id.*

Further, intermediate scrutiny would require Louisiana to "demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests," *McCullen*, 573 U.S. at 495, and that it "seriously undertook to address the problem with less intrusive tools . . . that other jurisdictions have found effective," *id.* at 494. But there is no

evidence that Louisiana could not have achieved its interests by relying on already "available generic criminal statutes," *id.* at 492, as discussed above, or by requiring proof that an individual's presence obstructs or intends to obstruct officers' duties, or while providing a defense for individuals exercising First Amendment rights. The result is that Louisiana is just one of two states in the union with such a statute,[5] and the lack of "comparable limits in other States" should have been a clear "danger sign[]" to lawmakers that the Act "may fall outside tolerable First Amendment limits." *Randall v. Sorrell*, 548 U.S. 230, 253 (2006).

For these reasons and those discussed above in connection with Plaintiffs' as-applied claim, the Act cannot survive even intermediate scrutiny. Under any plausibly relevant standard of review, the law is clear that statutes "vest[ing] unbridled discretion in a government official over whether to permit or deny expressive activity" violate the First Amendment—period. *City of Lakewood*, 486 U.S. at 755. HB 173 does just that. It is invalid on its face.

D. HB 173 is void for vagueness under the Due Process Clause.

In addition to its First Amendment defects, the Act is unconstitutionally vague. It has long been settled that "[f]reedom of speech and of the press . . . are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment," *Kay v. White*, 286 F. Supp. 684, 686 (E.D. La. 1968) (quoting *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (omission in original)), and a statute is "impermissibly vague"—and thus a violation of due process—if it "fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests," *Morales*, 527 U.S. at

[5] The other is Indiana. Ind. Code § 35-44.1-2-14. The next closest comparator is Florida—but that state's buffer-zone law prohibits approaching an officer with the *specific intent* to "[i]mpede or interfere with" the performance of their duties. Fla. Stat. § 843.31(2)(a)(1).

52 (plurality opinion).[6] The Act falls short on two independent grounds: It "fail[s] to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits," *id.* at 56 (plurality opinion), and it "authorize[s] and even encourage[s] arbitrary and discriminatory enforcement." *Id.*

As to fair notice, as other courts have observed in the context of liability for failure to obey a law enforcement order, due process requires that a law provide "warning about the behavior that [can] prompt[] a lawful dispersal order." *Bell*, 697 F.3d at 462; *see also Agnew v. District of Columbia*, 920 F.3d 49, 60 (D.C. Cir. 2019) (where the standards for issuing a move-on order are themselves vague, "[a] person's knowing failure to obey such an order could do nothing either to cure the officer's lawless discretion or to establish the individual's culpability"). But the Act authorizes officers to order an individual to withdraw for any reason (or no reason), and "[s]uch an order cannot retroactively give adequate warning of the boundary between the permissible and the impermissible," *Morales*, 527 U.S. at 59 (plurality opinion); *see also id.* at 69 (Kennedy, J., concurring in part and concurring in the judgment) (where a statute "would reach a broad range of innocent conduct . . . it is not necessarily saved by the requirement that the citizen must disobey a police order to disperse before there is a violation"). Otherwise, a statute that read "do what any officer tells you to do" would provide fair notice despite affording citizens no ability to conduct themselves so as to avoid a confrontation with law enforcement.

Moreover, the Act independently fails to provide fair notice and an opportunity to comply because reporters cannot workably determine whether they are within twenty-five feet of law enforcement when gathering news in the field, especially at a crowded, fast-evolving public

[6] Independent of their First Amendment interests, Plaintiffs also have a liberty interest in their ability to move freely in public spaces. *See Morales*, 527 U.S. at 53 (plurality opinion); *Vincent v. City of Sulphur*, 805 F.3d 543, 548 (5th Cir. 2015) (noting that "Supreme Court decisions amply support the proposition that there is a general right to go to or remain on public property for lawful purposes").

event. *See* Fernelius Decl. ¶ 15; Waivers Decl. ¶¶ 16–18; Thomas Decl. ¶ 15; Thibodeaux Decl. ¶ 9. And that difficulty is compounded by the fact that the prohibited zone "floats." *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 377 (1997). Indeed, compliance will be impossible when there is no practical way for a reporter to retreat through a crowd, where there is not enough space on a sidewalk to withdraw, or where multiple officers issue overlapping or contradictory orders. *See* Fernelius Decl. ¶ 16; Erbach Decl. ¶ 18; Thomas Decl. ¶ 16.

Finally, the Act is independently void for vagueness because it "is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Williams*, 553 U.S. at 304. In *Morales*, a majority of the Supreme Court squarely held that a lawful-order statute "violates the requirement that a legislature establish minimal guidelines to govern law enforcement," 527 U.S. at 60 (citation and internal quotation marks omitted), if it "does not provide any guidance to the officer deciding whether such an order should issue" in the first place, *id.* at 62. The Act does just that, with no standard of any kind to guide officers in deciding who should be ordered to move and under what circumstances. In other words, it "delegates basic policy matters to policemen," who decide whether to issue an order or make an arrest "on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). In that respect, the Act—like any other law that purports to grant officers the authority "to decide arbitrarily which members of the public they will order to disperse"—is "indistinguishable from the law . . . held invalid in *Shuttlesworth v. Birmingham*, [382 U.S. 87, 90 (1965)])." *Morales*, 527 U.S. at 58–59 (plurality opinion).

II. The remaining factors favor preliminary injunctive relief.

The rest of the preliminary-injunction factors follow the merits. In cases like this one involving a chilling effect on the exercise of First Amendment rights, the irreparable harm factor

is necessarily satisfied when plaintiffs can show a likelihood of success on the merits, because the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Book People*, 91 F.4th at 341 (citation omitted). And once the moving parties have established they "are likely to succeed on the merits of their First Amendment claim, the State and the public won't be injured by an injunction of a statute that likely violates the First Amendment." *Id.* In other words, "[i]njunctions protecting First Amendment freedoms are always in the public interest." *Id.* (citations omitted). Here, an injunction that shields the press from the Act's chilling effects—relieving Plaintiffs of the threat of arrest and self-censorship—would do no harm to any legitimate government interest and would serve the "major purpose" of the First Amendment: "to protect the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). A preliminary injunction should therefore be entered here.[7]

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court issue a preliminary injunction prohibiting Defendants from enforcing the Act.

Dated: September 13, 2024

Respectfully submitted,

/s/ Katie Townsend

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[7] Plaintiffs respectfully request waiver of a bond, *see* Fed. R. Civ. P. 65(c), since Defendants are not likely "to incur any significant monetary damages as a result of the preliminary injunction," *Thomas v. Varnado*, 511 F. Supp. 3d 761, 766 (E.D. La. 2020).

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DEEP SOUTH TODAY, *d/b/a* VERITE NEWS, GANNETT CO., INC., GRAY LOCAL MEDIA, INC., NEXSTAR MEDIA, INC., SCRIPPS MEDIA INC., and TEGNA INC., *Plaintiffs*, v. LIZ MURRILL, *in her official capacity as Attorney General of Louisiana*, ROBERT P. HODGES, *in his official capacity as Superintendent of the Louisiana State Police*, and HILLAR C. MOORE, III, *in his official capacity as District Attorney of East Baton Rouge Parish*, *Defendants*.	CASE NO. 3:24-cv-00623

DECLARATION OF CURTIS SPRANG

I, Curtis Sprang, declare as follows:

1. I am over the age of 18. I make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I have personal knowledge of the matters stated herein.

2. I am a News Anchor at WGNO in New Orleans, a broadcast television station owned by Nexstar, Inc. I have worked at WGNO for 28 years.

Before becoming a News Anchor at WGNO, I was a general assignment reporter and a weekend anchor.

3. I have often come into close contact with law enforcement officers while doing my job, most often at crime scenes or parades and other big events in New Orleans.

4. When reporting on law enforcement, I try to get as close as I can without causing problems so that I can pick up good-quality audio of what the officer is saying. I want to be able to hear the officer announcing himself, reading someone their rights, and asking someone questions, since that might be important information for the public later. The optimal distance depends heavily on what I am trying to record—I don't need to be five feet away to record fireworks, but if a police officer is saying something to someone on a scene, I need to be within a conversational distance. The same goes for getting an unobstructed view.

5. There are stories that I know I would not have been able to report on if I had not been within twenty-five feet of a law enforcement officer.

6. For example, I recently covered the aftermath of a police chase that ended with a police car from the Kenner Police Department in a bayou. When I arrived at the scene that evening, the car was already in the water; officers from Louisiana State Police and the New Orleans Police Department were also present. I identified myself to the officers at the scene and approached to ask what had

happened. Since there was no perimeter or tape set up, I was within a few feet of the officers.

7. I started recording and taking pictures with my phone, which I frequently use while doing my job. Because it was dark and my phone cannot zoom very effectively, I had to get close to the car to get usable images—within fifteen feet or so. We ran a story about this incident, and my photographs were published with it. *See* Curt Sprang, *Kenner Police Chase Ends With Police Car in Bayou St. John*, WGNO (July 3, 2024), https://bit.ly/3Sbo2sH.

8. At a distance of twenty-five feet, I would not have been able to speak to the responding officers or capture photos of the chase's aftermath.

9. Shootings are another context where I commonly have contact with officers. For instance in one recent incident, I went to the scene of an officer-involved shooting outside a home in Mandeville, on the north shore of Lake Pontchartrain.

10. I got there several hours after the shooting, around midnight, to take some photos and record video with my phone from the sidewalk. When I got there, a Mandeville Police officer told me that there was an area where they wanted me to stand, located on a street corner about fifty feet away from where I was. I understood him to be asking me to go to a designated media staging area, even though no other media were present at that hour.

11. When I responded that there was no tape up and that I was on the public sidewalk, the officer backed off his request that I go to the designated area.

12. Many of the officers at the scene were at times just a few feet away from me, and it was already difficult at that distance in the dark to get video that we could use. If I had been confined to the media staging area even farther away, it would have been impossible to capture the images we ultimately ran. *See* Curt Sprang, *2 Dead in Mandeville Following Welfare Check/Police Shooting*, WGNO (July 6, 2024), https://bit.ly/3SnczGz.

13. In addition to crime scenes, I find myself in close contact with law enforcement when covering parades and other big events in New Orleans.

14. In New Orleans, people sometimes get shot and killed on parade routes. Things get very chaotic very quickly when that happens, but I am very experienced at this point at covering what is happening around me while staying out of the way of law enforcement officers who are doing their jobs. It would rarely be possible, though, to see what is going on in those situations while staying at least twenty-five feet away from all of the officers on the parade route.

15. If HB 173 is allowed to go into effect, I expect to face more situations where an officer asks me to move to a place that obstructs my view— but now with the threat of arrest.

16. There's an expression I have heard often in Louisiana: "You might beat the charge, but you won't beat the ride." Even if criminal charges wouldn't stand up, or if I can't tell if a request is an order or not, I risk enduring the process of being handcuffed, transported in the back of a police car, and waiting in jail for hours. I do not want to be in that situation just for doing my job, so I would comply with an officer's request to move even though I am not interfering with or obstructing officers, even if it means that I cannot gather the news.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 13, 2024 in New Orleans, Louisiana.

Curtis Sprang

Prepared by:

Katie Townsend
Reporters Committee for Freedom of the Press
1156 15th St. NW Suite 1020
Washington, D.C. 20005

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DEEP SOUTH TODAY, *d/b/a* VERITE NEWS, GANNETT CO., INC., GRAY LOCAL MEDIA, INC., NEXSTAR MEDIA, INC., SCRIPPS MEDIA INC., and TEGNA INC., *Plaintiffs*, v. LIZ MURRILL, *in her official capacity as Attorney General of Louisiana*, ROBERT P. HODGES, *in his official capacity as Superintendent of the Louisiana State Police*, and HILLAR C. MOORE, III, *in his official capacity as District Attorney of East Baton Rouge Parish*, *Defendants*.	CASE NO. 3:24-cv-00623-RLB-SDJ

DECLARATION OF JAZMIN THIBODEAUX CHRETIEN

I, Jazmin Thibodeaux Chretien, declare as follows:

1. I am over the age of 18. I make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I have personal knowledge of the matters stated herein.

2. I am a Senior Reporter at KATC in Lafayette, Louisiana, a broadcast television station owned by Scripps Media Inc.

3. Before joining KATC, I was a producer or multimedia reporter at KLFY in Lafayette, KTBS in Shreveport, and News15 in Lafayette.

4. In my current role, I often come into close contact with law enforcement officers, usually several times a month. When I interview officers, of course, I stand right in front of them. And when I'm reporting on the activities of law enforcement, I get close so that I can understand what is going on, ask questions, and take photos.

5. As a part of my job as Senior Reporter, I often go to memorial services, festivals, fairs, and crime scenes with large crowds and a number of law enforcement officers at the scene. When reporting on these events, I take photos, record audio, do live shots, write notes, and conduct interviews.

6. In Baton Rouge, I sometimes cover events at the state capitol that draw a large law enforcement presence, like Governor Landry's inauguration.

7. My colleagues at KATC and I are respectful of law enforcement and careful not to interfere with anything they are doing, but we often need to be as close as a few feet to record audio and put the mic as close as we can.

8. When I first heard about HB 173, I spoke about it with my colleagues in the KATC newsroom. We were all concerned about what it might mean for us, and we all worried that an officer might arrest us for our work. In my personal experience, some officers sometimes have a problem with media doing their jobs.

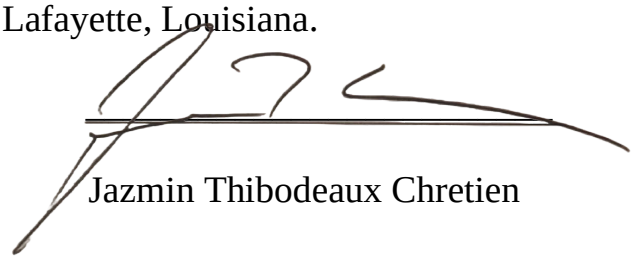
9. When discussing HB 173, my colleagues and I also agreed that we could not accurately estimate twenty-five feet when reporting in the field.

10. I don't carry a measuring tape on the job. If an officer tells me to move to a particular area and says that it is twenty-five feet away, I have no good way of knowing if he's right or not. Without HB 173, I would insist on my rights to gather news and record in public places in response to a request by a law enforcement officer that was unreasonable under the circumstances. With HB 173, I would comply to the best of my ability and stay a long distance away. I do not want to be arrested for doing my job.

11. Reporting the news is already a tough job. If HB 173 goes into effect, it will make it harder, and more dangerous, for me to do my job effectively.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 21, 2024 in Lafayette, Louisiana.



Jazmin Thibodeaux Chretien

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DEEP SOUTH TODAY, *d/b/a* VERITE NEWS, GANNETT, CO., INC., GRAY MEDIA, INC., NEXSTAR MEDIA, INC., SCRIPPS MEDIA INC., and TEGNA INC.,

Plaintiffs,

v.

LIZ MURRILL, *in her official capacity as Attorney General of Louisiana*, ROBERT P. HODGES, *in his official capacity as Superintendent of the Louisiana State Police*, and HILLAR C. MOORE, III, *in his official capacity as District Attorney of East Baton Rouge Parish*,

Defendants.

CASE NO. 3:24-cv-00623-RLB-SDJ

DECLARATION OF KATHERINE JANE FERNELIUS

I, Katherine Jane Fernelius, declare as follows:

1. I am over the age of 18. I make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I have personal knowledge of the matters stated herein.

2. I am the Local Government Reporter at Verite News in New Orleans, Louisiana, a non-profit news outlet operated by Deep South Today. I have been in

my current position for approximately eight months. Prior to working at Verite News, I worked as a freelance journalist and podcast producer for eight years.

3. It is my job to cover any part of local government that touches a New Orleans resident's life. I report on a wide range of local government entities, including law enforcement. I also encounter law enforcement when covering other parts of local government, including at city council meetings, events like parades and protests, and when reporting from city jails and courthouses.

4. Although my contact with law enforcement officers may increase or decrease depending on the season and the news cycle, I would estimate that, on average, I come into contact with law enforcement officers as a part of my job on a weekly basis.

5. When I am covering the activities of law enforcement, I need to be able to understand who's involved and what's being said. You can't get a name or a badge number from far away, so I get as close as I can. I also cannot capture good-quality audio and video from a distance, and I do both while reporting for fact-checking purposes—to make sure I get quotes and details right.

6. Based on my experience in podcasting, I know that to get good quality audio you typically need to be within five feet of someone. I try to get at least that close, while also trying to stay safe and avoid interrupting or interfering with what is happening.

7. When I am out in the field, I try not to carry too much with me, so I usually just record using my phone; I will use a mic and headphones to record audio.

8. I occasionally publish my audio and video footage along with my written reporting on the Verite News website, and I also often post audio and video from my reporting on my profile on the social media platform "X."

9. Often, I could not do my job at a distance. Many of my encounters with law enforcement involve crowds, for example, and when officers are doing crowd control, it's very difficult to avoid getting very close to them. Recently, I witnessed law enforcement officers arrest a person and their spouse at a city council meeting I was covering. The couple had interrupted the meeting by making disruptive comments and then refused to leave after being asked.

10. As the arrests were happening, the officers told me and the other people I was standing with in the council chambers to stay back, and we gave them a reasonable berth of five to ten feet. If the officers had asked me to move twenty-five feet from them, it would have been challenging for me to comply and stay inside the room because of the room's layout. I needed to record what was happening because I was covering the incident, so I did not want to stand back further—let alone leave the room—and risk losing my opportunity to document the arrest.

11. In another recent example, I was covering a pro-Palestinian encampment at Tulane University in the hours before law enforcement moved in to make arrests. There was already a large law enforcement presence, including Tulane police officers, New Orleans Police Department officers, and Louisiana State Police troopers, and I needed to approach several officers to ask questions and interview them about what was going on.

12. In 2020, when I was covering racial justice protests, I was similarly trying to see how law enforcement officers were responding to the demonstrations and what tactics they were using. I couldn't do that without getting close.

13. I first heard about HB 173 from a Verite News colleague who was covering the proposal, before it was enacted.

14. HB 173 will have a devastating effect on our ability to do journalism in public places. It automatically puts me and other Verite journalists in danger of arrest in many of the circumstances we find ourselves in on a weekly basis.

15. It is also very hard for me to visualize twenty-five feet, and it would be hard for me to figure out where it would be safe to stand when I am in close proximity to law enforcement officers. I am not at all confident in my ability to accurately estimate twenty-five feet when out in the field. In fact, I recently measured the distance with my husband so I could try to visualize it. Doing so

made me realize how frequently I come within twenty-five feet of law enforcement officers while doing my job.

16. There are law enforcement officers everywhere when I do my job, so HB 173 is making me second-guess if I can gather news in certain spaces. There are some parts of the French Quarter in New Orleans, for example, where it might be impossible to comply if you are standing on the street because the streets are narrow.

17. I want to avoid getting arrested and continue to gather news. But under HB 173, there will be circumstances where it will be impossible for me to strike that balance.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 13, 2024 in New Orleans, Louisiana.

Katherine Fernelius

Katherine Jane Fernelius

Prepared by:

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DEEP SOUTH TODAY, *d/b/a* VERITE NEWS, GANNETT CO., INC., GRAY LOCAL MEDIA, INC., NEXSTAR MEDIA, INC., SCRIPPS MEDIA INC., and TEGNA INC., *Plaintiffs*, v. LIZ MURRILL, *in her official capacity as Attorney General of Louisiana*, ROBERT P. HODGES, *in his official capacity as Superintendent of the Louisiana State Police*, and HILLAR C. MOORE, III, *in his official capacity as District Attorney of East Baton Rouge Parish*, *Defendants*.	CASE NO. 3:24-cv-00623-RLB-SDJ

DECLARATION OF PATRICK THOMAS

I, Patrick Thomas, declare as follows:

1. I am over the age of 18. I make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I have personal knowledge of the matters stated herein.

2. I am the Chief Photographer at WGNO in the New Orleans, Louisiana area, a broadcast television station owned by Nexstar Media, Inc. I have been in

my current role since November 2005. Before joining WGNO, I worked as a news photographer at two other stations in Lafayette: KLFY and KATC.

3. As Chief Photographer at WGNO, my work is a mix of supervising other journalists and going out into the field myself. I supervise nine people—including news photographers, editors, and news center operators.

4. I personally come into contact with law enforcement officers on the job frequently—at least once a month—usually when covering a crime scene or a press conference. I also come into close contact with officers when covering events with big crowds where officers are present for crowd control, like Mardi Gras, Jazz Fest, and other parades or protests.

5. When I encounter officers, I typically need to be pretty close to them to do my job—usually about 5 to 10 feet away. When there are many officers at a scene, I would struggle not to be within twenty-five feet of at least one officer.

6. In my experience, officers sometimes ask reporters to move away from a scene to stop us from capturing audio or video they don't want made public.

7. For example, in mid-July, I was covering a crash scene in Jefferson Parish where police chased a suspect and ran the suspect off the road. By the time I arrived, the police were putting the suspect in an ambulance. The suspect was saying something about the police officers, and I got closer to try to hear what was being said.

8. I was standing about five from the officers when I heard the suspect say that he had been punched in the mouth and tased six times, that he was a businessman just trying to collect scooters, and that "not all Jefferson Parish officers are bad officers, just that one." I could not tell from the context which officer the suspect was referring to.

9. An officer then came over and told me and another journalist from a different station to move back.

10. We both stepped back several feet, but the officer then asked us to move across the street on the other side of an active lane of traffic. I was reluctant to cross, including out of concern for my own safety, but the officer was insistent. He kept telling me over and over again to cross the street, even though I was not interfering with anything that was happening at the scene and he never suggested that I was.

11. From what I could tell, it seemed like I was being ordered to move back because the officer had a negative reaction to the suspect's criticism.

12. The officer seemed ready to arrest me if he could find a reason to. But I have been in this job for twenty years, and I know how to cover crime scenes without interfering with the activities of law enforcement. I knew that I was already far enough away and not doing anything to hamper the investigation.

13. If HB 173 was in effect when this happened, though, I would have been forced to comply rather than keep gathering the news.

14. I have a SONY camera and a decent microphone that I carry around with me when I'm in the field, and it would be challenging for me to capture usable audio and video for broadcast if I were twenty-five feet away from my subject. To record audio of an ordinary conversation, you need to be at least within ten to fifteen feet, often closer depending on the situation and the background noise.

15. I would also struggle to comply with an order to stay back twenty-five feet in practice, since it is hard for me to determine how long of a distance that would be in the field. When our newsroom heard about HB 173, I had our engineering team measure out twenty-five feet for me and I was stunned at what a long distance it was.

16. I would likewise have trouble complying if multiple officers enforced HB 173 against me at once, or if the officers themselves were moving. I am not sure whether I would have to keep backing up if an officer continued coming closer to me. And the problem would be especially nerve-wracking in a large crowd, where it would be challenging to comply without obstructing my view of the officer and my ability to report on the officer's actions.

17. I always try to abide by orders from law enforcement, but I also know my rights; I know that I am allowed to record what an officer is doing so long as I am not interfering or impeding their active investigation. If HB 173 is allowed to go into effect, it will make my job more dangerous. Covering law enforcement requires getting close to see and hear what is going on. I cannot do that safely if I am confronting the risk of arrest when gathering news that the public has the right to see.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 13, 2024 in New Orleans, Louisiana.

Patrick Thomas

Prepared by:

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DEEP SOUTH TODAY, *d/b/a* VERITE NEWS, GANNETT CO., INC., GRAY LOCAL MEDIA, INC., NEXSTAR MEDIA, INC., SCRIPPS MEDIA INC., and TEGNA INC., *Plaintiffs*, v. LIZ MURRILL, *in her official capacity as Attorney General of Louisiana*, ROBERT P. HODGES, *in his official capacity as Superintendent of the Louisiana State Police*, and HILLAR C. MOORE, III, *in his official capacity as District Attorney of East Baton Rouge Parish*, *Defendants*.	CASE NO. 3:24-cv-00623

DECLARATION OF RICHARD ERBACH

I, Richard Erbach, declare as follows:

1. I am over the age of 18. I make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I have personal knowledge of the matters stated herein.

2. I am the News Director at WGNO in New Orleans, Louisiana, a broadcast television station owned by Nexstar, Inc. I have been in my current position for approximately fifteen years. I have worked in media, supervising and

engaging in newsgathering for 47 years. Prior to becoming News Director at WGNO, I was the News Director at Meredith Corp's Atlanta station WGCL, Vice President of Sales & Public Relations for NewSource for CNN, and the Vice President of News for KTVI in St. Louis, Missouri.

3. In my role as News Director at WGNO, I manage a staff of 45, including six reporters, five anchors, and seven photographers. I make decisions about where to allocate newsroom resources across our different coverage areas.

4. I oversee the work of reporters, anchors, and photojournalists who cover breaking news in Louisiana and who, as part of that work, come into close contact with law enforcement officers on a daily basis.

5. Our recent coverage of a pro-Palestinian encampment on the Tulane University campus, for instance, involved interacting with officers from the New Orleans Police Department and Louisiana State Police and taking video from within twenty-five feet of officers. *See* Raeven Poole, *Law Enforcement Agencies Raid Pro-Palestine Protest on Tulane University*, WGNO (May 1, 2024), https://bit.ly/3XYmE0o.

6. Our reporters also routinely encounter officers at press conferences, including availabilities held by the Governor, and at events like Mardi Gras, Jazz Fest, the Thibodaux Fireman's Fair, or professional, college, and high school sports games.

7. When I train reporters and photographers, I advise them to get as close as they can without putting themselves or others at risk in order to get usable audio and video for broadcast. I also make clear that they should comply with all law enforcement requests and avoid becoming part of the scene.

8. From my experience working in newsroom management, I know that in order to capture usable audio of an event unfolding at a conversational volume reporters must typically be no more than five feet away to make recordings that can be used in a broadcast. To capture usable audio and video without risking an obstructed view, our journalists must usually be within ten to fifteen feet away.

9. I first learned about HB 173 when it passed in the Louisiana House of Representatives through reporting by other news organizations. I am concerned that the law will make it harder for WGNO reporters and photographers to gather the news safely and effectively. I also worry about officers enforcing the law unfairly, applying it to some members of the media but not others, or to some members of the media and not the public.

10. Many law enforcement officers understand that we need to be able to do our jobs, but I have personal experience with some officers discouraging lawful reporting by singling out members of the press and asking journalists to leave the scene of newsworthy events.

11. In March or April of 2023, for instance, I was coming home from a photography shoot on a Sunday morning when I saw several fire vehicles and police cars. I parked and walked down to the sidewalk corner to see what was taking place. Soon, I saw that law enforcement officers were securing the scene of a motorcycle accident; the victims had already been taken away from the area.

12. WGNO routinely covers traffic incidents because of their importance to public safety. *See, e.g.*, Rachel Hernandez, *Man Killed in Motorcycle Crash on I-10 in New Orleans East*, WGNO (May 24, 2024), https://bit.ly/3SjZlKF.

13. From the public sidewalk, I started shooting video and audio of the scene with my iPhone from a distance of about ten feet from the crash. A Jefferson Parish Sheriff's Deputy then came up and told me to stop shooting. Knowing that I was within my rights to be present and recording, I refused, telling him that I was a member of the media.

14. Next, the lieutenant came over and demanded my press credentials. After I showed my ID, he called me a "ghoul" and again asked me to move back. The deputies backed off only after I offered to call the Sheriff to settle the issue.

15. While this was unfolding, there was another woman—not a member of the press but a member of the general public—who was there taking photos right next to me from the same distance I was. The deputies never said anything to

her or asked her to move back. My impression was that I was being singled out because the deputies believed I was a journalist.

16. They seemed ready to arrest me, but I knew that I had the right be there. If HB 173 had been effect at the time, though, I would have been forced to comply with their requests rather than document the scene.

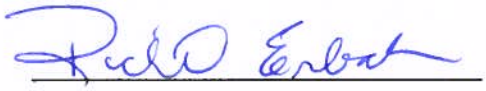
17. Based on my own experience and the experiences of the WGNO journalists I supervise, I would estimate that a member of the WGNO newsroom is similarly asked to step back or move away from an officer around once a week.

18. If HB 173 goes into effect, I will need to work with other members of newsroom leadership to explain the law to our reporters. I will ask reporters to comply with the law and always prioritize their own safety, but I do not know how to measure twenty-five feet in practice or what to do if multiple officers standing in different places attempt to enforce the law against them at the same time.

19. Because WGNO's coverage areas will continue to bring our reporters and photojournalists within twenty-five feet of law enforcement officers virtually every day for the foreseeable future, I am concerned that HB 173 will be used to arbitrarily prevent our journalists' from getting close enough to gather the information they need to inform the public, despite the fact that our journalists are careful not to obstruct law enforcement officers' ability to carry out their official duties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 31, 2024 in New Orleans, Louisiana.



Richard Erbach

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DEEP SOUTH TODAY, *d/b/a* VERITE NEWS, GANNETT CO., INC., GRAY LOCAL MEDIA, INC., NEXSTAR MEDIA, INC., SCRIPPS MEDIA INC., and TEGNA INC., *Plaintiffs*, v. LIZ MURRILL, *in her official capacity as Attorney General of Louisiana*, ROBERT P. HODGES, *in his official capacity as Superintendent of the Louisiana State Police*, and HILLAR C. MOORE, III, *in his official capacity as District Attorney of East Baton Rouge Parish*, *Defendants*.	CASE NO. 3:24-cv-00623

DECLARATION OF TYRIANNE NICOLE WAIVERS

I, Tyrianne Nicole Waivers, declare as follows:

1. I am over the age of 18. I make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I have personal knowledge of the matters stated herein.

2. I am the News Director at 4WWL in New Orleans, Louisiana, a broadcast television station owned by TEGNA, Inc.

3. Before joining 4WWL, I worked at WFAA in Dallas, Texas, WESH in Orlando, Florida, WDSU in New Orleans, and Fox8 in New Orleans.

4. In my current role as News Director at 4WWL, I oversee the newsroom and several dozen employees, including 7 anchors, 10 photographers, and 13 reporters. I oversee the editorial vision for the newsroom and coordinate with other managers to determine logistics.

5. 4WWL's coverage encompasses 13 parishes in southeastern Louisiana, and our journalists' cover events at the state capitol in Baton Rouge at least several times a month.

6. 4WWL's journalists come into contact with law enforcement officers on a regular basis. They cover crime scenes that routinely put them in close contact with officers multiple times a week. Large events and festivals with significant law enforcement presence happen several times a month, and we cover those too.

7. Mardi Gras is the biggest event, and there is a huge law enforcement presence there. My photographers and reporters are in the crowd and in the thick of things, right alongside officers managing crowds and directing traffic. Our journalists are often within a few feet of officers doing their job.

8. We also cover press conferences that involve close contact with law enforcement officers, typically at least once a week. For instance, the Governor

always has his Louisiana State Police security detail with him wherever he goes, including press conferences. The same is true for the Mayor of New Orleans, who is protected by officers from the New Orleans Police Department.

9. In one case, we reported on alleged improper behavior by a member of the mayor's security detail. That reporting involved newsgathering within twenty-five feet of law enforcement. *See, e.g.*, *Closer Look at the Vappie, Cantrell Timeline*, 4WWL (July 21, 2024), https://perma.cc/B9A9-P3B3.

10. My team also has regular contact with the Louisiana State Police, even more so since they have increased their presence in New Orleans.

11. For one, we have reported on the State Police's involvement in several recent chases that ended in car crashes. Because of a consent decree with the U.S. Department of Justice, the New Orleans Police Department has different rules of engagement with respect to car chases. Those same rules do not apply to the State Police, so we follow those chases closely to document whether State Police are endangering members of the public. *See, e.g., A Third State Police Chase and a Third Crash in Three Days*, 4WWL (June 12, 2024), https://perma.cc/59JT-VR5B.

12. When reporting on these crashes and other activities of law enforcement, the reporters and photographers I supervise may get as close as two or three feet away from officers, depending on the needs of the story.

13. We tell reporters to get as close as they need to capture what's happening while remaining safe and avoiding obstructing an investigation.

14. We follow the law, but we keep our camera pointed in the direction of the action. As journalists that is our duty to the public.

15. My reporters are regularly asked by law enforcement to voluntarily step back at scenes. Those journalists are happy to give them a few feet if the circumstances call for it — but not twenty-five. I cannot think of any situation in the past where it would have been necessary to give officers that much room.

16. I first heard about HB 173 from one of my reporters when it was under consideration during the legislative session. We talked about its implications for our work, and we were concerned that we would not be able to reliably measure twenty-five feet in the field. A group of us pulled out a tape measure, and we were all surprised at just how long twenty-five feet was.

17. Looking at that distance, it drove home how often our view would be obstructed at that range while reporting. Everyone in the room thought it was excessive. I have members of my team who have been reporters for decades in some instances, and they've had no issues working at much closer distances.

18. We've discussed in our newsroom how to adapt if HB 173 goes into effect, and I've told our journalists to follow law enforcement orders while doing their best to gauge how far twenty-five feet is. But my reporters and I are worried

that the law will be enforced arbitrarily, or that they won't know how to comply in a crowded situation like a parade.

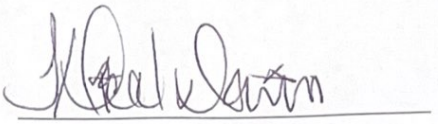
19. My team regularly records law enforcement within twenty-five feet and does so without obstructing any activities of law enforcement. We know that upcoming events like the Super Bowl will bring our journalists close to countless law enforcement officers in the field. And we have seen countless incidents where it has been important to have police conduct captured on tape.

20. The New Orleans Police Department has struggled with community trust—so much so that the federal government had to impose a consent decree. There's deep skepticism of some officers in New Orleans, and it's important for the public to know if the Department has moved forward.

21. If HB 173 goes into effect, the quality of the audio and video we are able to capture at a distance of twenty-five feet or more will be severely degraded. At that range, an image will not be clear, and we will not be able to hear what's happening. That is not fair to the public trying to understand how officers are performing their duties, and it isn't fair to the officers our coverage depicts.

22. As journalists, we create the first record of history. We are responsible for giving the public a correct impression of what is happening. HB 173, if it goes into effect, will get in the way.

Executed on September 13, 2024 in New Orleans, Louisiana.



Tyrianne Nicole Waivers

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