March 9, 2014

Chief Justice John G. Roberts
Supreme Court of the United States
One First Street NE
Washington, D.C., 20543

Dear Chief Justice Roberts,

Fifty years ago today, the Supreme Court decided a landmark press freedom case in *New York Times Co. v. Sullivan,* which helped media outlets cover controversial topics of national import without fear of frivolous lawsuits.

On this important anniversary we, the undersigned members of U.S. media organizations and members of pro-transparency NGOs who comprise the Coalition for Court Transparency, are asking the Court to enact policies that will help the public better understand its important work.

Specifically, we believe the Supreme Court should embrace contemporary expectations of transparency by public officials and allow the recording and broadcast of its courtroom proceedings. Following Justice John Marshall Harlan's concurrence in *Estes v. Texas* (1965), we believe the "day" has long since passed "when television [has] become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process."

This Court has long supported the First Amendment presumption that court proceedings should be open to the public.[1] Greater openness, the Court has recognized, fosters confidence in the judicial system and encourages dialogue about public issues.[2] As Justice William Brennan explained in *Richmond Newspapers, Inc. v. Virginia,* for public debate to be "uninhibited, robust, and wide-open" people must first be informed.[3] As such, since this country's founding, courtrooms have "been open to all who care to observe."[4]

While these cases involve the right to attend court proceedings, the rationales hold true for live broadcasts of oral arguments. Video would provide an important civic benefit, as it would be an incredible platform for legal education and future students of history, rhetoric and political science.[5] As it stands now, only a few hundred individuals can fit into the courtroom at One First Street, so many people hoping to view the arguments are unable to, especially in cases that have broad public interest.

A 2010 poll showed that six in 10 Americans did not know there are nine members of the Court[6] (while a survey last year indicated that more than three-fourths of Americans support televising Court hearings[7]). Broadcasting arguments would narrow that civic education gap. It would also help journalists explain cases more faithfully and encourage the public engagement that this Court has deemed necessary for a healthy democracy.

As an aside, we want to make it clear that neither the Coalition for Court Transparency nor its member groups were responsible for the video of Supreme Court proceedings that appeared online last month. We do not endorse or encourage such behavior at the High Court or in any courtroom.

Justices have expressed concern that cameras could encourage grandstanding or cause journalists to use sound bites that do not accurately capture arguments. However, experiences in other courts and the realities of today's news-viewing habits show that the benefits of video strongly outweigh potential concerns. The Canadian Supreme Court has

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Society for Professional Journalists

Tully Center for Free Speech at Syracuse University

Non-Governmental Organizations

Alliance for Justice

Citizens for Responsibility and Ethics in Washington

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International Association of Whistleblowers

Liberty Coalition

National Forum on Judicial Accountability

National Judicial Conduct and Disability Law Project

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broadcast proceedings since 1993, and cameras have not diluted the substance of arguments or disrupted the decorum.[8] Instead, as Chief Justice Beverley McLachlin remarked, they have "contributed to public confidence" in the court by opening it to "many citizens across the country."[9] Similarly, Ohio Supreme Court Chief Justice Maureen O'Connor has noted that video streaming in her court has not led to grandstanding but has served as a valuable teaching tool.[10]

All 50 state supreme courts have more modern broadcasting guidelines than the U.S. Supreme Court, and the U.S. Court of Appeals for the Ninth Circuit began video-streaming all *en banc* oral arguments in December 2013.[11] Meanwhile, C-SPAN, which broadcasts congressional hearings, has been praised for giving citizens the opportunity to "watch government in action."[12] Though the Supreme Court is in a unique position as the nation's highest court, that status provides more reason to open its educational opportunities to a wider public instead of making access more difficult.

It is possible that journalists could broadcast sound bites from arguments, but that potential is no reason to deny the public information. Print reporters already use excerpted quotes and summarize cases in articles; that is how people digest the news. Broadcasting arguments would only help to preserve the integrity of the Court by ensuring that journalists have the most accurate rendering of what was said in the courtroom, as opposed to their notes or those of a transcriber. Moreover, video, a primary-source material, gives people an option other than relying on the filtered thoughts of reporters, some of whom may not have even been in the courtroom.

If this Court is still hesitant to stream video of cases, an intermediate step would be to release same-day audio of oral arguments before moving to video. We are appreciative that the Court has begun providing audio at the end of each week and has released it on the same day for select cases. Providing audio on the day a hearing occurs would increase public understanding of the Court by ensuring that reporters could use it in their stories when news of each argument is still fresh.

At a time when faith in our public officials is waning and the American public is increasingly disillusioned with political institutions, you have an opportunity to fill this vacuum of leadership. In the spirit of *New York Times v. Sullivan,* we ask you to put cameras in the Supreme Court.

We are looking forward to your response, which you can direct to Bruce Brown, executive director of the Reporters Committee for Freedom of the Press, at 703-807-2101 or bbrown@rcfp.org. Thank you for your consideration.

Sincerely,

The Members of the Coalition for Court Transparency

www.OpenSCOTUS.com

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1 *See, e.g. Richmond Newspapers, Inc. v. Va.*, 448 U.S. 555 (1980); *Press-Enterprise Co. v. Superior Court of California, Riverside,* 464 U.S. 501 (1984); *Press-Enterprise Co. v. Superior Court of California, Riverside,* 478 U.S. 1 (1986). 2 *Richmond Newspapers,* 448 U.S. at 570-73. 3 *Id.* at 587 (Brennan, J., concurring) (quoting *New York Times Co. v. Sullivan,* 376 U.S. 254, 270 (1964)). *See also Globe Newspaper Co. v. Superior Court for Norfolk Cnty.*, 457 U.S. 596, 604 (1982), which (finding that a major purpose of the First Amendment is to "protect the free discussion of governmental affairs.") (internal quotation omitted). 4 *Richmond Newspapers,* 448 U.S. at 564. 5 The Reporters Committee for Freedom of the Press, Technology and Transparency at the Supreme Court (Oct. 25, 2013), *available at* http://cs.pn/1gvxBMu. 6 Sonja R. West, *The Monster in the Courtroom*, 2012 B.Y.U. L. Rev. 1953, 1965 (2012). 7 Fox News poll, March 17-19, 2013, *available at* http://www.foxnews.com/politics/interactive/2013/03/21/fox-news-poll-voters-want-courtroom-cameras/ 8 Beverley McLachlin, Chief Justice of Canada, Remarks on the Relationship Between Courts and the Media (Jan. 31, 2012), *available at* http://bit.ly/1fqxgYl. *See also* Edward L. Carter, *Supreme Court Oral Argument Video: A Review of Media Effects Research and Suggestions for Study,* 2012 B.Y.U. L. Rev. 1719, at 1745-46. 9 Beverley McLachlin, Chief Justice of Canada, Remarks on the Relationship Between Courts and the Media (Jan. 31, 2012). 10 The Reporters Committee for Freedom of the Press, Technology and Transparency at the Supreme Court (Oct. 25, 2013). 11 *Id.* 12 Lisa T. Mcelroy, *Cameras at the Supreme Court: A Rhetorical Analysis,* 2012 B.Y.U. L. Rev. 1837, 1842 (internal quotations omitted).