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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 PACIFIC MEDIA WORKERS GUILD;
11 ANGEL JOSE FLORES; JULISSA RUIZ
RAMIREZ; ALYSSA LEIVA,

12 Plaintiffs,

13 v.

14 CITY OF MODESTO; BRANDON
15 GILLESPIE, in his official capacity as
Modesto Chief of Police,

16 Defendants.
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Case No. 2:26-CV-01623-JAM-CKD

**BRIEF OF AMICI CURIAE IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: June 30, 2026
Time: 1:00 p.m.
Crtrm.: Crtrm. 6, 14th Floor
Judge: Hon. John A. Mendez

Amici curiae Central Valley Journalism Collaborative, First Amendment Coalition, Freedom of the Press Foundation, The McClatchy Company, LLC, National Press Photographers Association, Reporters Committee for Freedom of the Press, and Society of Professional Journalists of Northern California respectfully submit the following brief in support of Plaintiffs' motion for a preliminary injunction to emphasize the importance of protecting journalists who bravely cover protests and demonstrations despite significant risks to their safety.

I. THE FIRST AMENDMENT AND CALIFORNIA LAW RECOGNIZE THE ESSENTIAL ROLE OF THE PRESS IN REPORTING THE NEWS AND COVERING PROTESTS.

In our system of government, the press plays an essential role in documenting mass demonstrations and the law enforcement response thereto. Without robust protection of journalists' ability to report on these events, the press cannot fulfill its constitutional function of holding the government accountable to the people and serving as the "powerful antidote to any abuses of power by governmental officials." *Mills v. Alabama*, 384 U.S. 214, 219 (1966).

To "preserve an untrammelled press as a vital source of public information," *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936), the First Amendment singles out the press as "the only organized private business that is given explicit constitutional protection." *Scheetz v. Morning Call, Inc.*, 747 F. Supp. 1515, 1528 (E.D. Pa. 1990) (quoting Potter Stewart, *Or of the Press*, 26 Hastings L.J. 631, 633 (1975)), *aff'd*, 946 F.2d 202 (3d Cir. 1991).

It is beyond debate that "newsgathering is an activity protected by the First Amendment," and "the First Amendment protects recording and photographing matters of public interest." *Garcia v. County of Alameda*, 150 F.4th 1224, 1230 (9th Cir. 2025) (cleaned up). As the Ninth Circuit has recognized, "When wrongdoing is underway, officials have great incentive to blindfold the watchful eyes of the Fourth Estate," which "is the guardian of the public interest." *Leigh v. Salazar*, 677 F.3d 892, 900 (9th Cir. 2012).

In the wake of widespread protests against the killing of George Floyd in 2020, the California Legislature recognized the essential role of the press in covering protests and the law enforcement response thereto by guaranteeing that reporters may enter or remain in areas closed by law enforcement during a protest and that their newsgathering while doing so cannot be

1 obstructed. Cal. Penal Code § 409.7(a). This statute is similar to protections for the press in
 2 covering natural disasters and avalanches. Cal. Penal Code §§ 409.5, 409.6. These laws represent
 3 “the Legislature’s considered judgment that members of the news media must be afforded special
 4 access to disaster sites” and other areas closed to the general public “in order that they may
 5 properly perform their function of informing the public.” *Leiserson v. City of San Diego*, 184 Cal.
 6 App. 3d 41, 51 (1986).

7 **II. INDEPENDENT COVERAGE OF PROTESTS AND THE LAW ENFORCEMENT**
 8 **RESPONSE IS ESSENTIAL TO THE PUBLIC INTEREST IN EXPOSING**
 9 **MISINFORMATION AND HOLDING GOVERNMENT ACCOUNTABLE.**

10 Independent news coverage of protests is essential to reporting the facts and exposing
 11 misinformation. This is not a new concern. The Kerner Commission, empaneled to study civil
 12 unrest in the 1960s, examined news coverage of unrest. Its report noted that the government’s
 13 control over information had contributed in part to a misleading public sense of the extent of
 14 violence, noting that reporting on official estimates of property damage had left “an indelible
 15 impression of damage up to more than 10 times greater than actually occurred.” *Report of the*
 16 *National Advisory Commission on Civil Disorders* 202 (1968), <https://perma.cc/D3J2-SFGQ>.
 17 In one incident, journalists who reached a scene themselves realized that what government
 18 officials had characterized as “nests of snipers” were, in fact, “the constituted authorities shooting
 19 at each other.” *Id.* at 205. Where reporters were forced to rely on “police and city officials [as]
 20 their main—and sometimes their only—source of information,” coverage was skewed in favor of
 21 those sources. *Id.* at 207. “But more first-hand reporting in the diffuse and fragmented riot area,”
 22 the Commission concluded, could have “temper[ed] easy reliance on police information and
 23 announcements.” *Id.*

24 A similar dynamic was present in the wake of protests that erupted in the summer of 2020.
 25 As “surrogates for the public,” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980)
 26 (plurality opinion), journalists provided extensive firsthand coverage. *See, e.g., The 2021 Pulitzer*
 27 *Prize Winner in Breaking News Reporting: Staff of the Star Tribune, Minneapolis, Minn.*, Pulitzer
 28 Prizes, <https://www.pulitzer.org/winners/staff-star-tribune-minneapolis-minn> (collecting
 coverage). Often such reporting provided a sharp contrast to official accounts. *See, e.g., Alex*

1 Horton, *In Violent Protest Incidents, a Theme Emerges: Videos Contradict Police Accounts*,
 2 Wash. Post (June 6, 2020), <https://perma.cc/UTU8-5VX7> (collecting “inaccurate or outright
 3 misleading” official statements later undermined by the press or public’s firsthand videos).
 4 As these examples show, press coverage of protests exemplifies the “special and constitutionally
 5 recognized role of that institution in informing and educating the public.” *First Nat’l Bank of Bos.*
 6 *v. Bellotti*, 435 U.S. 765, 781 (1978).

7 **III. THE ORDINANCE IMPEDES EFFECTIVE COVERAGE OF PROTESTS AND**
 8 **DENIES RIGHTS GUARANTEED BY THE FIRST AMENDMENT OR PENAL**
 9 **CODE SECTION 409.7 BY PROHIBITING JOURNALISTS FROM PROTECTING**
 10 **THEMSELVES AGAINST SUBSTANTIAL RISKS OF INJURY AND EVEN**
 11 **DEATH.**

12 Newsgathering and reporting are some of the primary conduits by which the public
 13 receives information about government activity, but journalists cannot do their jobs when they are
 14 unable to observe due to injuries from chemical agents, such as pepper spray or tear gas, impact
 15 weapons, or other devices. It is imperative that journalists be able to cover law enforcement
 16 operations in public places safely and effectively, especially the police response to mass
 17 demonstrations. By preventing them from doing so, the ordinance constructively denies journalists
 18 the rights guaranteed by the First Amendment or Penal Code section 409.7.

19 Threats to the safety of journalists cannot be understated. The U.S. Press Freedom Tracker
 20 has documented that since 2017 there have been more than 1,400 instances of journalists in the
 21 United States facing assaults by both law enforcement and others.¹ That data includes more than
 22 400 instances when journalists were struck or sprayed with chemical irritants,² and more than 450
 23 instances when journalists were shot or shot at with various crowd-control munitions.³ Over 100
 24 of those incidents occurred in California.⁴

25 ¹ <https://pressfreedomtracker.us/all-incidents/?categories=10>.

26 ² <https://pressfreedomtracker.us/all-incidents/?tags=chemical+irritant&categories=Assault>

27 ³ <https://pressfreedomtracker.us/all-incidents/?tags=shot+%2F+shot+at&categories=Assault>.

28 ⁴ <https://pressfreedomtracker.us/all-incidents/?state=California&tags=shot+%2F+shot+at&categories=Assault>;
<https://pressfreedomtracker.us/all-incidents/?state=California&tags=chemical+irritant&categories=Assault>

1 In the words of the Reporters Committee for Freedom of the Press (“RCFP”), “There can
 2 be no doubt that law enforcement’s use of arrest and indiscriminate government force, particularly
 3 chemical agents like pepper spray and tear gas, which can act to prevent observation and recording
 4 entirely, is a threat to the press’s ability to do its job. Excessive and indiscriminate force can chill
 5 journalists in their first-hand newsgathering and stymie their ability to obtain information from
 6 other observers.” *Tincher v. Mullin*, No. 25-cv-4669, Doc. No. 328-1, Brief of Amici Curiae
 7 RCFP and 23 News and Media Organizations, at 12 (D. Minn. Apr. 13, 2026).⁵

8 Crowd control tactics such as the use of tear gas and so-called “less-lethal munitions”
 9 (“LLM”) have long exposed journalists to severe and lasting physical harm, from concussions to
 10 broken bones and even death. *See, e.g.*, Reps. Comm. for Freedom of the Press, *Press Freedoms in*
 11 *the United States* 2020, at 8 (May 3, 2021), <https://perma.cc/9JPW-V558> (tallying hundreds of
 12 physical attacks on reporters in 2020, most at the hands of law enforcement officers during public
 13 assemblies); Raul A. Reyes, *Prominent Latino Journalist Ruben Salazar, Killed 50 Years Ago,*
 14 *Tackled Racism, Identity*, NBC News (Aug. 28, 2020), <https://perma.cc/V3VP-AHAJ> (recognizing
 15 Ruben Salazar, veteran Los Angeles Times reporter and bureau chief, who died after being struck
 16 with a tear gas canister fired by police while covering a protest against the Vietnam War).
 17 When such risks prevent journalists from covering newsworthy protests, they can have an
 18 “immediate and irreversible” impact on the right to gather and report the news, akin to that of a
 19 prior restraint. *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976).

20 A history of violence against journalists was documented in *L.A. Press Club v. City of Los*
 21 *Angeles*, 799 F. Supp. 3d 1007 (C.D. Cal. 2025). “In 2000, journalists were struck by projectiles,
 22 hit by batons, and subjected to other force as they recorded the LAPD’s dispersal of protests
 23 surrounding the Democratic National Convention.” *Id.* at 1015. “[I]n 2007, the LAPD deployed a
 24 total of 146 less-lethal impact munitions and over 100 uses of the baton against media and
 25 protestors, peaceful or not, at a May Day rally in MacArthur Park.” *Id.* During protests sparked by
 26
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28 ⁵ Available at <https://www.rcfp.org/briefs-comments/tincher-v-mullin/>.

1 the “death of George Floyd in May of 2020” and afterward, the Los Angeles Police Department
 2 continued to use “less-lethal munitions” (“LLMs”) against journalists and others. *Id.* at 1015-16.

3 More recently, journalists covering protests against immigration raids in Los Angeles
 4 “faced an onslaught of physical force” from police officers using “projectiles, tear gas, or other
 5 uses of force on individuals who bore markers distinguishing them as press and (in some cases)
 6 stood apart from protestors.” *Id.* at 1017. For example, an officer hit a television journalist “in her
 7 leg with a rubber bullet.” *Id.* at 1018. Another officer shot a reporter “with a rubber bullet in the
 8 abdomen from approximately 25 feet away.” *Id.* A third officer shot a reporter “with an LLM in
 9 the knee,” and the reporter “lives with pain and walks with a cane.” *Id.* at 1019.

10 Officers also “fired indiscriminately at crowds that included members of the press.” *Id.* at
 11 1019. Officers “discharged ‘skip-fire’ rounds into a group of protestors and journalists, hitting
 12 CalMatters reporter Sergio Olmos.” *Id.* On another occasion, “officers fired rubber bullets into the
 13 crowd, hitting photographer Marshall Woodruff, slicing open his right eye, and leaving him with
 14 potentially permanent vision loss.” *Id.* Another reporter “was shot in the face and leg,
 15 approximately 90 feet from police.” *Id.* “Other members of the media were tear gassed while
 16 among the crowds,” sometimes “multiple times” or “without warning.” *Id.*

17 Helmets, vests, masks, and breathing devices significantly mitigate the documented risks
 18 of harm to journalists who inform the public by reporting on public assemblies even when they
 19 become dangerous. By making it a crime for anyone attending a protest, including journalists, to
 20 possess or wear a wide range of personal protective gear, such as gas masks or similar breathing
 21 devices or helmets and protective vests and jackets, the ordinance at issue prevents journalists
 22 from protecting themselves against risks of serious physical injury or even death.

23 Journalists covering protests do not necessarily wish to conceal their identities. Indeed,
 24 although they may not legally be required to do so, they may wish to be identified as journalists to
 25 avoid being confused with protestors or others, and they can be identifiable through their use or
 26 display of cameras, credentials, or press markings, or by their actual live reporting on events.
 27 *Cf. Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 841 n.3 (9th Cir. 2020)
 28 (noting nonexclusive “indicia” of being a journalist can include “visual identification as a member

1 of the press, such as by carrying a professional or authorized press pass, carrying professional gear
 2 such as professional photographic equipment, or wearing a professional or authorized press badge
 3 or other official press credentials, or distinctive clothing, that identifies the wearer as a member of
 4 the press”). Moreover, their need for personal protective gear is purely defensive, to protect
 5 themselves from harm without any intent to engage in confrontation.

6 However, the ordinance prohibits exactly the kind of gear that journalists often rely on to
 7 reduce risk of injury while covering protests. *See* Committee to Protect Journalists, *Guide to PPE*
 8 *(Personal Protective Equipment)*;⁶ RCFP, *Tips for covering protests*;⁷ Radio Television Digital
 9 News Association, *SAFE Training Part 2: Safety Equipment for Civil Unrest*;⁸ L.A. Press Club,
 10 *Tips for Safety Covering Protests*.⁹ When covering protests, journalists should not be forced to
 11 choose between protecting themselves from harm and risking arrest and prosecution. Faced with
 12 that stark choice, journalists may refrain from such coverage entirely. By criminalizing the use of
 13 personal protective gear commonly used by journalists, the ordinance undermines the public
 14 interest in full and fair reporting on protests and the police response thereto. Intentionally or not,
 15 the ordinance acts to shield the government from accountability and contribute to the risk of
 16 misinformation arising from the lack of firsthand reporting.

17 By doing so, the ordinance denies journalists the First Amendment right to cover protests,
 18 as explained by Plaintiffs. The ordinance also denies journalists the rights expressly guaranteed to
 19 them by California Penal Code section 409.7. Under that statute, when peace officers “establish a
 20 police line, or rolling closure at a demonstration, march, protest, or rally,” journalists “may enter
 21 the closed areas,” and officers shall not “interfere with, or obstruct” such journalists who are
 22 “gathering, receiving, or processing information for communication to the public.” Cal. Penal
 23 Code § 409.7(a). But interference with or obstruction of newsgathering is exactly what the
 24 ordinance accomplishes.

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 26 ⁶ https://cpj.org/wp-content/uploads/2020/11/PPE-Glossary_CPJ-FINAL.pdf

27 ⁷ <https://www.rcfp.org/tips-for-covering-protests/>

28 ⁸ <https://www.rtdna.org/news/part-2-safety-equipment-for-civil-unrest>

⁹ <https://lapressclub.org/tips-for-safely-covering-protests-updated-2022/>

Given the likelihood, if not prevalence, of deployment of munitions such as tear gas and other projectiles at protests that result in closures by law enforcement due to an alleged unlawful assembly or otherwise, the ordinance’s prohibition of personal protective gear makes it effectively impossible for journalists to cover many protests safely. By doing so, the ordinance constructively denies journalists their statutory right to enter closed areas and cover the news. As with constructive discharge from employment, a reasonable journalist faced with the “intolerable” condition of being forced to cover protests without personal protective gear “would have no reasonable alternative except to quit” doing so. *Turner v. Anheuser-Busch, Inc.*, 7 Cal. 4th 1238, 1248 (1994). The ordinance cannot be allowed to do indirectly what law enforcement officers cannot do directly—prevent journalists from fulfilling their statutory function of covering protests.

IV. CONCLUSION

For the foregoing reasons and those stated by Plaintiffs, the Court is respectfully requested to grant Plaintiffs’ motion for a preliminary injunction.

Dated: June 9, 2026

FIRST AMENDMENT COALITION

By

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JOHN DAVID LOY

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