No. 18-1762

IN THE

# United States Court of Appeals for the Fourth Circuit

In re MURPHY-BROWN, LLC,
Petitioner.

On Petition for a Writ of Mandamus to the United States District Court for the Eastern District of North Carolina

## BRIEF AMICI CURIAE OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AND NORTH CAROLINA CHAMBER LEGAL INSTITUTE IN SUPPORT OF PETITIONER

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August 6, 2018

## RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 States. Manufacturing employs more than 12 million men and women, contributes $2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than three-quarters of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The North Carolina Chamber Legal Institute (Chamber) provides a mechanism for persons and companies interested in the creation of wealth and opportunity for North Carolinians to participate in policy issues affecting the business and legal climate of the State. It is affiliated with the North Carolina Chamber of Commerce, which has more than 750 business-organization members.

The NAM and the Chamber have no parent company and no publicly held company holds more than a ten percent interest in the NAM or the Chamber. No publicly held corporation or other publicly held entity has a direct financial interest in the outcome of the litigation within the meaning of Local Rule 26.1(b).

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

Page

**CASES:**

## TABLE OF AUTHORITIES—Continued

## TABLE OF AUTHORITIES—Continued

Page

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## STATEMENT OF INTEREST OF AMICI CURIAE

The National Association of Manufacturers (NAM) and North Carolina Chamber Legal Institute (Chamber) respectfully submit this brief as *amici curiae*.[1]

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 States. Manufacturing employs more than 12 million men and women, contributes $2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than three-quarters of all private-sector

[1] All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than *amici* and their members and counsel contributed money intended to fund the brief's preparation or submission.

research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

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Like Murphy-Brown, the NAM and the Chamber's members frequently find themselves in litigation that attracts media attention. And like Murphy-Brown, their members rely on their attorneys and communications teams to provide accurate information and considered advocacy to the press and the public. The NAM and the Chamber write in this case to underscore the First Amendment and practical harms of the District Court's sweeping gag order on manufacturers, their attorneys, and the public that relies on them for accurate information and thoughtful opinions about ongoing cases.

## SUMMARY OF ARGUMENT

I. The District Court's gag order in this case has all the features of a government restraint that does *not* pass constitutional muster. For starters, it is a

content-based restraint on speech; it regulates based on *what* a speaker says. Content-based speech restrictions are subject to strict scrutiny, requiring the regulator to show both a compelling government interest and no less-restrictive way to achieve the interest.

The hurdle facing the District Court's order is all the higher because the order is a prior restraint; it prohibits speech before it is made rather than punishing objectionable speech after it is uttered. Prior restraints are even more disfavored than content-based restrictions and have been described as "the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

A content-based prior restraint such as the District Court's here should therefore be subjected to the most skeptical review this Court can conduct. And the District Court's gag order cannot pass it. For one thing, it mixes criminal and civil concepts. The order invokes the Sixth Amendment, but only the Seventh Amendment is at issue. Even assuming that the fairness of a civil trial is a compelling state interest that can support a content-based prior restraint, moreover, the District Court did not adequately articulate why its gag order was necessary to serve that interest or why there was no less-restrictive order that would achieve the same fairness goals. The order cannot be sustained.

II. The District Court's gag order also inflicts practical harms on businesses and the public. The District Court's gag order, if used as a model in other cases, could keep manufacturers from complying with their regulatory disclosure obligations. A manufacturer kept from characterizing a suit, for instance, would have a hard time telling shareholders whether it believes that a case will impair earnings. And even if some solution could be cobbled together, the Court should avoid the problem altogether and vacate the gag order.

More broadly, in our media-saturated and brand-conscious world, companies must engage with the press and the public. That is especially true during litigation. Study after study shows that the media tends to offer a default, pro-plaintiff bias that can shade public perception. A business can respond to that perception, and participate in public discourse, only by engaging and presenting the facts and its interpretation of them. Resorting to "no comment"—as the District Court's gag order effectively requires—only makes things worse. The public thinks that a business that will not comment on pending litigation must have something to hide.

The public, too, benefits when businesses speak on the record. The public has an interest in accurate information, and the parties to a case generally know more than a lay reporter or commentator about the matter. And in the cases most likely to be awash in pretrial publicity, gagging the parties will not choke off news coverage. It will simply drive reporters to less-informed sources, making it *more*

likely the publicity that a case receives will be inaccurate or prejudicial. The District Court believed its gag order avoided this problem because it allows the parties to publicize factual information "without elaboration or any kind of characterization." J.A. 617-618. But the line between permissible facts and impermissible "characterization" is hopelessly blurry, and few rational parties will test that line when contempt is the penalty for guessing wrong.

The petition should be granted.

## ARGUMENT

### I. THE DISTRICT COURT'S CONTENT-BASED, UNDEREXPLAINED, PRIOR RESTRAINT CANNOT SURVIVE STRICT-SCRUTINY REVIEW.

As Murphy-Brown explains, the District Court's gag order is overbroad and inadequately explained under this Court's existing judicial-gag-order cases. Pet. Br. 21-34. And the gag order is particularly problematic under the Supreme Court's modern speech doctrine in three other respects: It is content-based, a prior restraint, and imposed in a civil, rather than a criminal, case. Each by itself is fatal to the District Court's order in light of the limited record supporting it. Together, they show just how far the District Court went astray.

1. The Supreme Court and this Court have long distinguished between content-neutral and content-based speech restrictions. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226-27 (2015); *Central Radio Co. v. City of Norfolk*,

811 F.3d 625, 632 (4th Cir. 2016). A speech restriction is content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Cahaly v. Larosa*, 796 F.3d 399, 405 (4th Cir. 2015) (citation omitted).

The District Court's gag order is "content-based because [its] application depends entirely on the topic of the speech." Erwin Chemerinsky, *Lawyers Have Free Speech Rights, Too: Why Gag Orders on Trial Participants Are Almost Always Unconstitutional*, 17 Loy. L.A. Ent. L.J. 311, 320 (1997). The only speech banned is speech "relating to the trial" that "a reasonable person would expect to be communicated to a public communications media." J.A. 617. And it makes no difference that both sides to the lawsuit are gagged. "[I]t is well established that '[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.' " *Reed*, 135 S. Ct. at 2230 (quoting *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 530, 537 (1980)).

The Supreme Court reiterated just last Term that content-based regulations "are *presumptively* unconstitutional." *National Inst. of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (emphasis added and citation omitted). Content-based restrictions on speech "may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.*

(citation omitted). And the calculus does not change just because the District Court's order gags, in part, licensed attorneys. "Speech is not unprotected merely because it is uttered by 'professionals.' " *Id.* at 2371-72.

The gag order is even more constitutionally suspect because it is a prior restraint. It forbids speech *before* it is even spoken. *See Alexander v. United States*, 509 U.S. 544, 550 (1993) ("The term prior restraint is used 'to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.' ") (citation and emphasis omitted). The Supreme Court has called prior restraints "the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). It is better to punish those "who abuse rights of speech *after* they break the law than to throttle them and all others beforehand." *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975) (emphasis added). And although the District Court cited *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), in support of its gag order (J.A. 616-617), that case "only involved the standard for *after-the-fact* punishment on lawyer speech, not prior restraints." Chemerinsky, *supra*, at 316 (emphasis added). In restricting speech before it is made, the District Court's gag order is subject to an even-more-rigorous level of constitutional review.

The gag order cannot survive that exacting constitutional scrutiny. Even assuming that the protection of a party's right to trial by impartial jurors in a civil case is a compelling state interest, the District Court did not explain why its gag order was a narrowly tailored response on the facts of this case. *See* J.A. 616-618. The District Court referred generally to the "volume and scope of prejudicial publicity" in previous cases and "the substantial risk of additional publicity tainting or biasing future jury pools." J.A. 617. But the District Court did not describe the "volume and scope" of publicity that it had observed, why the publicity was "prejudicial," or how the publicity created a "substantial risk of" creating "additional publicity" that would "taint[ ] or "bias[ ] future jury pools." *See id.* A gag order like the one entered by the District Court requires "findings of fact that would justify it." *Capital Cities Media, Inc. v. Toole*, 463 U.S. 1303, 1307 (1983) (Brennan, J., in chambers). The District Court's underexplained order falls well short of that mark.

2. The District Court's gag order also went astray in mixing Sixth and Seventh Amendment concepts. The District Court stated that its order was necessary to "balance the parties' Sixth Amendment rights with the guarantees of the First Amendment." J.A. 616. But the Sixth Amendment has no role to play in this case; it protects the right of a *criminal* defendant to be tried by an impartial

jury. *See* U.S. Const. amend. VI; *see also Fullwood v. Lee*, 290 F.3d 663, 682 (4th Cir. 2002).

To be sure, the Seventh Amendment "preserve[s]" the right to trial by jury. U.S. Const. amend. VII. And this Court has acknowledged that "[o]ur system of justice properly requires that civil litigants be assured the right to a fair trial." *Hirschkop v. Snead*, 594 F.2d 356, 373 (4th Cir. 1979) (en banc) (per curiam). But the difference between the Sixth and Seventh Amendments means that the government has a less compelling interest in gagging speech in a civil case. It is unsurprising, then, that gag orders in *civil* cases are far less frequent. *See In re Petroforte Brasileiro de Petroleo Ltda.*, 530 B.R. 503, 512 (Bankr. S.D. Fla. 2015) (collecting cases). The seminal Supreme Court case governing prior restraints on extrajudicial statements was a criminal case. *Nebraska Press Ass'n*, 427 U.S. at 551. So are this Court's two decisions upholding prior restraints on statements to the press. *In re Morrissey*, 168 F.3d 134, 140 (4th Cir. 1999); *In re Russell*, 726 F.2d 1007, 1008 (4th Cir. 1984).

In fact, the one time this Court considered a restriction on lawyers' speech about civil cases, it struck the restriction down. This Court held that the Virginia Supreme Court's bar on "making a broad range of comments during the investigation or litigation of [a] case" was unconstitutional as vague and

overbroad. *Hirschkop*, 594 F.2d at 373. And this Court has *never* approved of a gag order in a civil case.

No surprise there. In *Hirschkop*, the Court emphasized several features of civil trials that make gag orders less justified. For one, "[c]ivil litigation is often more protracted than criminal prosecution" and "it is not unlikely that the rule could prohibit comment over a period of several years from the time investigation begins until the appellate proceedings are completed." *Id.* For another, "[c]ivil actions may . . . involve questions of public concern," and "[t]he lawyers involved in such cases can often enlighten public debate." *Id.* And "[i]t is no answer to say that the comments can be made after the case is concluded, for it is well established that the [F]irst [A]mendment protects not only the content of speech but also its timeliness." *Id.*

Those lessons are directly applicable here. These coordinated civil actions are likely to drag on for a while, such that Murphy-Brown may be gagged for *years* from advocating for its business and its operations. *See* Pet. Br. 5. These actions also threaten pork-production operations important to the North Carolina economy. *Id.* at 6-7. North Carolina pork producers support 46,000 full-time jobs across 2,100 farms and collectively take in $2.1 *billion* in annual cash receipts. Steve Troxler, North Carolina Commissioner of Agriculture, *State's Pork Industry Feeds Us, Provides Jobs in NC*, Sampson Indep. (June 19, 2018),

https://tinyurl.com/ycanklp4. Most farms are small, family-owned businesses that feed their neighbors and the world, *id.*; North Carolina exports almost $600 million worth of pork a year. N.C. Pork Council, *NC Pork: Well Raised, Well Traveled*, https://tinyurl.com/y8d28pj8 (last visited Aug. 5, 2018). Plaintiffs' actions are thus not just private disputes; they present questions of tremendous public importance for North Carolina's family farmers, their employees, the North Carolina economy, and even global trade.

The parties and their lawyers involved in the cases could provide this important perspective to the public and policymakers. And the District Court did not provide any empirical information suggesting that gagging the parties' and lawyers' public advocacy was necessary to protect the fairness of the future trials. *Hirschkop*, 594 F.2d at 373. The Court should follow *Hirschkop* and strike down the District Court's unwarranted civil gag order.

3. None of this is to say a judicial gag order can *never* be entered in a civil case. Knowingly false statements and false statements made with reckless disregard of the truth do not enjoy First Amendment protection and can be prohibited or punished. *See Garrison v. Louisiana*, 379 U.S. 64, 75 (1964). And although " 'it is the rare case' in which a . . . speech restriction is narrowly tailored to serve a compelling interest[,] . . . those cases do arise." *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1665-66 (2015) (citation omitted); *see also*

*Southeastern Promotions*, 420 U.S. at 558 (a prior restraint is "not unconstitutional per se"). But the scrutiny required to uphold a content-based, prior-restraint gag order requires far more than the District Court provided in its ruling.

## II. THE DISTRICT COURT'S GAG ORDER, ESPECIALLY IF ADOPTED BY OTHER COURTS, WILL PREVENT BUSINESSES FROM SPEAKING TO THEIR STAKEHOLDERS AND DEFENDING THEIR REPUTATIONS.

The District Court's gag order, especially if upheld and adopted as a model in other cases, has real-world consequences for businesses like Murphy-Brown. Modern manufacturers must communicate with suppliers, customers, and the public about ongoing litigation, and they very often do so through the media. The District Court's gag order prevents effective public communication by limiting both what a manufacturer can say and how it can say it. That hurts both the manufacturer and the public.

1. Blanket gag orders may place corporations—especially public corporations—in a difficult spot when it comes to complying with their reporting obligations. Federal securities laws are emblematic of this tension, as they often impose "an affirmative duty to disclose *specific* material facts . . . at *specific* junctures." Pamela M. Gibson & Edward G. Timlin, *Ethical and Legal Considerations When Communicating During a Corporate Crisis*, 59 Rocky Mtn. Min. L. Inst. §§ 3.01, 3.06 (2013). For instance, SEC rules and regulations require corporations to provide mandatory content in "annual reports on Form 10-K,

quarterly reports on Form 10-Q, [and] registration statements on Forms S-1 or S-3." *Id.* Moreover, crisis-related incidents—such as bankruptcy, loan acceleration, or material impairment—trigger additional mandatory disclosures. *Id.* Corporations must also comply with the rules of stock exchanges in the United States and abroad, which demand yet more disclosures. *Id.*

Take one example. As part of its public-disclosure requirements, a corporation must often report material litigation and disclose what the loss to the company from the litigation might be. *See* Christopher M. Holmes et al., Association of Corporate Counsel, *When to Set a Reserve: Now, Never, or Somewhere in Between* 4-11 (2004), *available at* https://tinyurl.com/gwsmgqr. A standard disclosure where a company believes a loss could be material but is unlikely might say that the company "believes that this claim lacks merit and intends to defend itself vigorously against it." *Id.* at 12. But it is not clear that statement would be consistent with the District Court's admonition that a corporate defendant cannot discuss pending litigation "without any elaboration or any kind of characterization whatsoever." J.A. 618.

The District Court's order, if upheld and used as a model in other cases, could put businesses in a bind between complying with their regulatory reporting obligations and complying with a district court's gag order. The Court should avoid that thicket and vacate the gag order.

2. The District Court's gag order inflicts broader harms on manufacturers, which are often deeply rooted in a local economy. Manufacturers must learn and respond to the needs of suppliers, investors, consumers, employees, and the public—a group collectively known as stakeholders. One way they do so is through corporate communications, a field built around the "central concepts of stakeholder, identity and reputation." Joep Cornelissen, *Corporate Communications: Theory and Practice* 48 (2004). Linking those concepts is the recognition, supported by the evidence, that a business's success depends on how it interacts with—and is viewed by—its stakeholders. *Id.* at 9.

Corporate communications as a field came from economic and social necessity. Changing socio-economic conditions—marked by less-stable, more-competitive markets—demanded that businesses engage with "governments, trade unions, investors and stockholders." *Id.* at 36. But it was not until the early 1990s that modern corporate communications, with its emphasis on two-way, active stakeholder management, took root. *Id.* at 43. At that time, businesses better-integrated their public relations and marketing teams to provide more coherent and consistent messaging. *Id.* at 43, 45. Social demands were equally influential. Increased government regulation and heightened scrutiny by the public and the media encouraged businesses to communicate not only with traditional stakeholder

groups like suppliers, employees, and customers, but also with public-facing groups such as governments and local communities. *Id.* at 43.

Those changes mean that a manufacturer's reputation is now one of its most valuable assets. Many of *Fortune*'s "Most Admired Corporations" and *Financial Times* "Most Respected Companies" are also the best performing and most profitable. *See id.* at 82. And a 2001 survey of Fortune 500 companies found that corporate-communications departments were focused first and foremost on protecting the business's good name. *See id.* at 48.

The need for corporate communication is all the greater during litigation. A sweeping gag order like the one imposed by the District Court in this case stifles manufacturer speech when the public needs it the most and allows false information to go without challenge from those in the best position to correct it.

The 24-hour news cycle means that businesses in litigation face more and more pressure to engage. A major 1970s IBM antitrust lawsuit, which lasted about fifteen years, generated approximately 500 *New York Times* stories over that decade and a half. James F. Haggerty, *Putting the Best Face On It: Litigation PR in the Era of 24-Hour Cable News*, Bus. L. Today, July–Aug. 2004, at 17, 17. Between 1998 and 2001, by contrast, the *New York Times* ran more than 1,000 stories about the Microsoft antitrust case. *Id.* And with digital-first publications

and social-media reporting now dominating the landscape, the number of stories will only grow.

It also is a commonly held view, by commentators and judges alike, that the media narrative is often stacked against business defendants. Numerous studies have documented the press's pro-plaintiff slant, such that "even modest pretrial publicity can prejudice potential jurors against a defendant." Steven B. Hantler et al., *Extending the Privilege to Litigation Communications Specialists in the Age of Trial by Media*, 13 CommLaw Conspectus 7, 13 (2004) (citation omitted). A practice treatise co-authored by two judges likewise admonishes that "[i]n crafting media and general strategies, defense attorneys for large corporations should be aware of the pro-plaintiff bias that tends to exist in the media." 4A Robert L. Haig et al., New York Practice Series, *Commercial Litigation in New York State Courts* § 64.8 (4th ed. 2017 update). Even plaintiffs' attorneys have admitted to "purposefully and systematically set[ting] out to discredit businesses and their products before, during, and after trials in order to raise the stakes for the litigation." Hantler, *supra*, at 12.

Gag orders like the District Court's hamstring corporate-communications strategies aimed at leveling the playing field. And more than that: Not only does a gag order allow the press's pro-plaintiff slant to go unchecked, it exacerbates the public's negative perceptions about a business's reluctance to comment on a case.

*Id.* at 11-12. According to one survey, 62% of Americans take a business's "no comment" about pending litigation to mean that the business is covering up wrongdoing. Julia Hood, *'No Comment' Won't Cut It, Finds Survey*, PR Week (Aug. 5, 2002), https://tinyurl.com/y7psj2z8

It thus falls to a manufacturers' lawyers and their communications teams to distill "the complexities of a particular court case into a format that reporters can easily digest." Haggerty, *supra*, at 20. Done right, corporate communication during litigation enhances the accuracy of published stories. For instance, during a contract dispute over *Rosie Magazine*, the judge chided Rosie O'Donnell's opponents' "ill-advised" lawsuit against her. *Volatile Times Demand Persistent Messages*, Of Counsel, Dec. 2008, at 14, 16. CNN, however, reported that the judge had berated both sides. *Id.* O'Donnell's lawyers went to the network to set the record straight. *Id.* CNN's coverage was corrected within the hour. *Id.* This incident and others like it demonstrate that the parties themselves are best suited to conduct the media-watchdog role. They, after all, know the most about their cases and have the most incentive to protect their reputations. *Id.* And in cases where the stakes are lower or the parties less famous, a manufacturer may be its only advocate in the press.

The public, too, loses when businesses gag corporate and attorney speech. As the Supreme Court explained in the context of restrictions on attorney speech,

"[t]o the extent the press and public rely upon attorneys for information because attorneys are well informed, this may prove the value to the public of speech by members of the bar." *Gentile*, 501 U.S. at 1056-57; *see also Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 250 (7th Cir. 1975) ("Since lawyers are considered credible in regard to pending litigation in which they are engaged and are in one of the most knowledgeable positions, they are a crucial source of information and opinion.") "If the dangers of [attorneys'] speech arise from its persuasiveness, from their ability to explain judicial proceedings, or from the likelihood the speech will be believed, these are not the sort of dangers that can validate restrictions." *Gentile*, 501 U.S. at 1057. In other words, the public looks to attorneys and their business clients for knowledgeable information about a case, and a court cannot gag speech just because the public might believe it. *Id.*

It is not enough to say that the District Court's order allows for Murphy-Brown to provide factual information "without elaboration or any kind of characterization whatsoever." J.A. 617-618. The line between reciting facts and "characterizing" facts is notoriously vague. Take a pedestrian example from this Court's own practice. Before 2002, a party submitting a supplemental-authority letter had to "state the reasons for the supplemental citations" but could not include "argument." Fed. R. App. P. 28 advisory committee's note to 2002 amendment. The rule drafters eventually dropped the prohibition against argument,

acknowledging "the difficulty of distinguishing" between the reasons for a supplemental citation and argument about the citations. *Id.* If skilled appellate attorneys often cannot discern the difference between factual information and argument, good luck to lay manufacturers—especially when the penalty for guessing wrong is contempt.

Without attorney and manufacturer-client speech, "the media must accept off-the-record statements or second- and third-hand accounts" in lieu of on-record statements from those most knowledgeable. Chemerinsky, *supra*, at 313. What comes out at the other end of the pipe is both less well-sourced and less accurate. *Id.* at 312-313. The O.J. Simpson civil suit is instructive. There, a broad gag order banning attorneys and parties from discussing the case publicly did not dampen media coverage. It "merely limit[ed] the sources of information." *Id.* at 312. That, in turn, made it more likely that the information that *was* reported would be inaccurate, a result that is "counterproductive to the goal of fair judicial proceedings." *Id.* at 313.

The District Court's gag order here presents the same risks. The District Court suggested that one reason for the gag order was the increasing pretrial publicity around the Plaintiffs' cases. *See* J.A. 617. But the District Court did not explain why it believed that its gag order would decrease the publicity surrounding the cases. It is far more likely that the *number* of stories will remain the same; they

will just not include useful information from the parties and their attorneys. *See* Chemerinsky, *supra*, at 312-313. And that *increases* the risk that potential jurors will be exposed to inaccurate or prejudicial information about the case. *See id.* Thus, the gag order will likely not even stamp out the evil it purports to address.

## CONCLUSION

For the foregoing reasons and those in Murphy-Brown's brief, the petition for writ of mandamus should be granted.

Respectfully submitted,

/s/ Catherine E. Stetson

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August 6, 2018

## CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limits of Fed. R. App. P. 29(a)(1) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 4,357 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

/s/ Catherine E. Stetson
Catherine E. Stetson

## CERTIFICATE OF SERVICE

I certify that on August 6, 2018, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Catherine E. Stetson
Catherine E. Stetson