



REPUBLIC MEDIA

200 E. Van Buren St. • Phoenix, AZ 85004

April 2, 2012

Janet Johnson
Acting Clerk
Arizona Supreme Court
1501 West Washington Street
Phoenix, Arizona 85007-3329

Re: Phoenix Newspapers, Inc. / KPNX Broadcasting Co.
(Comment on Petition No. R-12-0004 Regarding Victim
Identification)

Dear Ms. Johnson:

On behalf of KPNX Broadcasting Co., which produces “12 News,” and Phoenix Newspapers, Inc., which publishes *The Arizona Republic* (collectively, “Republic Media”), we write to oppose certain draft amendments to the Arizona Rules of the Supreme Court (Rules of Criminal Procedure and Rules of Procedure for the Juvenile Court) regarding victim identification (Petition No. R-12-0004). These sweeping changes would remove from public court records the names of juvenile victims and adult victims of sex offenses. For the reasons set forth below, the proposed amendments are overbroad and would restrict the flow of information to the public in a way that is contrary to Arizona’s tradition of open court records. *See* Ariz. R. Sup. Ct. 123(c)(1).

According to the Petition, the proposed amendments are designed to address “re-victimization that may occur from online access to embarrassing references in court documents and ‘subsequent sharing’ through social media outlets.” [Petition, at 2] Yet recent amendments to Rule 123 already restrict online access to case information. For example, Ariz. R. Sup. Ct. 123(g)(1)(C)(ii) prohibits remote access to records involving juvenile victims of sexual offenses. Moreover, the Rule prohibits remote electronic access by registered users of court computer systems to: (1) booking-related documents, (2) warrants, (3) charging documents, (4) pre-sentence reports, (5) the defendant’s financial statement, (6) disposition reports, and (7) transcripts. *See* Ariz. R. Sup. Ct. 123(g)(1)(C)(ii). Currently, Rule 123 provides *less* access for members of the general public who are not registered users of court computer systems, than for registered users. Simply put, most of the documents accessible online by the public do *not* contain victims’ identities or victim-related information.

A less-restrictive alternative to the proposal would be to prohibit online posting in judicial records of all victim-related information, but not to ban all such information from court records generally. *E.g., Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13-14 (1986) (requiring use of less-restrictive alternative before sealing court proceedings). This would be a more “narrowly tailored” solution to concerns about online access to victims’ identities than prohibiting the use of victims’ names in virtually all judicial records from charging documents to appellate opinions. *Id.*

By contrast, prohibiting the use of victims’ identities in *all* judicial records is inconsistent with Arizona’s tradition of open government, especially in the judicial branch. Ariz. R. Sup. Ct. 123(c)(1) (“Historically, this state has always favored open government and an informed citizenry.”). By restricting access to basic details of the State’s prosecution of a crime, the proposal would undercut the media’s ability to inform the public about important matters involving the judicial branch. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572-73 (1980) (“Instead of acquiring information about trials by firsthand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media.”).

For example, although most news organizations (including KPNX and *The Arizona Republic*) maintain ethics policies that generally prohibit the publication of identities of sexual assault victims, this information in court records is critical to newsgathering and reporting about crimes, such as accurately linking a suspect to a particular crime. Prohibiting access to this information could lead to *less* accurate reporting – and *less* public information – about the criminal justice system.

In addition, the proposal would prohibit the use of names even where victims are deceased. This protects no direct privacy interests, but would severely hamper journalists’ ability to gather news and information about matters of acute public concern, including child abuse cases that result in fatalities and near-fatalities. Indeed, the proposal would conflict with statutes that govern disclosure of information and records relating to fatalities and near-fatalities of children in the custody of Child Protective Services. *See* A.R.S. § 8-807.

PNI and KPNX are sensitive to the rights of crime victims contained in the Victims’ Bill of Rights, and recognize that these rights are sometimes at odds with the public’s right to be informed about government. But as the U.S. Supreme Court observed over 60 years ago, “[a] trial is a public event. What transpires in the court room is public property.” *Craig v. Harney*, 331 U.S. 367, 374 (1947). The courts should resist the temptation to censor information currently in the public domain when more narrowly-tailored alternatives exist. *See id.* (“There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.”). Ironically, these proposed changes may have the effect of denying certain rights to victims that they would otherwise be guaranteed under the Arizona Constitution – for example, a right to have

their presence known and a reasonable belief that “fairness, respect, and dignity” requires openness, not anonymity. Ariz. Const. Art. II, Sec. 2.1(A).

Simply put, court records provide “basic data of governmental operations” that journalists rely upon to inform the public. *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 492 (1975) (“Without the information provided by the press[,] most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally.”). This proposal cuts too broadly against our tradition of open government and may well need further study. For example, the Court recently established an ad hoc committee to study the impact of wireless mobile technology and social media on court proceedings, which could consider the issue further. *See* Admin. Order No. 2012-22. At a minimum, less-restrictive alternatives – such as additional limitations on online access to victim-related information – should be considered before removing so much information from the public record at every phase of a criminal proceeding.

For these reasons, we urge the Court to reject these proposed amendments to Arizona’s court rules regarding the identification of victims in judicial records.

Respectfully submitted,



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