The Supreme Court should protect citizen journalists

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The First Amendment protects the freedom of the press. But who qualifies as "the press"? Darnella Frazier was not an employee of any credentialed news media corporation when she pulled out her cell phone and recorded one of the most consequential stories of 2020. Neither was George Holliday when he used his camcorder to similarly record history in 1991. Without citizen journalism, Rodney King and George Floyd might not be household names today.

As these examples show, anyone can make and break the news. Citizen journalists are a crucial part of "the press." And the Supreme Court now has an opportunity to affirm that independent journalists have the same constitutional rights as the corporate media.

Brian Green is an archetypal independent journalist. Since 2013, he has regularly posted investigative journalism videos to his YouTube channel "Libertys Champion," with a focus on local government and court cases in Pierce County, Wash. The channel has steadily grown to have over 18,000 subscribers.

To produce his videos, Green interviews local officials and requests documents under Washington's Public Records Act. That law generally requires state agencies to produce government records at the request of the public. But certain personal records of public employees, like photographs and birthdates, are available only to the "news media," not the general public.

Green requested such personal records in the course of his reporting, but he was denied. When he appealed to the Washington Supreme Court, he was told that as an independent journalist he could never qualify as the "news media." Only corporate entities, that court held, could qualify as "news media" under Washington law. Now Green has asked the U.S. Supreme Court to take his case, arguing that this discrimination against non-corporate media violates the First Amendment.

Of course, the Constitution does not require that states allow access to *all* the information they possess. But forty-three years ago, Justice Potter Stewart persuasively argued that the First Amendment does "assure the public and the press equal access once government has opened its doors" to information under its control. In other words, once a state like Washington decides

that *some* may access its personal records and use them to produce journalism, it cannot deny that same access to other speakers.

Justice Stewart was right, and it's time for the full Court to adopt this rule. The Press Clause was designed to secure to *everyone* the ability to publish information to the public. The Framers would have recognized that the lone pamphleteer is just as much a part of the press as the largest newspaper.

Granting special government access and privileges to the corporate media is incompatible with those original values. If state governments had free rein to selectively withhold information from certain disfavored citizens, the Press Clause would lose much of its vitality. Discrimination among speakers is a tool that governments can easily use to influence the content of the news we all consume. Justice Stewart's rule would protect citizen journalists from such abuses and help foster access to more diverse sources of news and commentary.

Further, a rule of equal access would not make states powerless to safeguard sensitive information. Washington could have limited access to those who could demonstrate that they would use the information for legitimate journalistic purposes. Such a scheme would base access to information on the *conduct* of those requesting the information, not their mere identity. And of course, Washington could have chosen to deny access to everyone, thus placing all on an equal footing

But what a state may not do, at least without a compelling justification, is selectively provide information to some members of the news media based solely on their identity. The Court should take up Green's case, put an end to Washington's unequal scheme, and ensure the continued freedom of *all* the press.

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