



## **NPPA, Cato Institute File Scotus Brief On Rights To Record Police Activity**

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A “friend of the court” brief has been filed in support of a petition asking the U.S. Supreme Court to review the rights of a photographer who was arrested while recording the activities of police officers.

Submitted by the National Press Photographers Association, The Cato Institute and five other media organizations, the amicus brief asks the court to consider the case of Antonio Buehler, a photographer who was arrested in Austin, TX for recording an officers conducting a DUI stop in 2012.

Buehler was eventually acquitted of the charges, after which he filed a lawsuit against the Austin Police Department, suing them on grounds of violating his civil rights. The NPPA filed an amicus brief in support of his case in 2014.

The trial court refused to dismiss the case on qualified immunity grounds, finding instead that that not only is there a constitutional right to document police officers, but that the right was clearly established at the time of the arrest. Magistrate Judge Mark Lane held that “the First Amendment protects the right to videotape police officers in the performance of their official duties, subject to reasonable time, place and manner restrictions.”

Continuing, the judge wrote, “if a person has the right to assemble in a public place, receive information on a matter of public concern, and make a record of that information for the purpose of disseminating that information, the ability to make photographic or video recording of that information is simply not a new or a revolutionary expansion of a historical right. Instead the photographic or video recording of public information is only a more modern and efficient method of exercising a clearly established right.”

In its subsequent motion for summary judgment, the Austin Police Department argued that they should not be held liable in the civil case because Buehler had been indicted by a grand jury, and that indictment was enough to prove probable cause for his arrest. A federal court agreed, granting the motion and dismissing the case and the U.S. Court of Appeals for the Fifth Circuit affirmed that ruling.

Buehler's petition to the Supreme Court argues that not only was he never found guilty of any crime, he was never given the opportunity to prove lack of probable cause for his arrest. It further asserts that because the grand jury relied on testimony from the arresting officer, and since those proceedings are closed, Buehler did not know what was said, and could not have defended himself against the accusations.

The brief filed by Cato and the NPPA and joined by First Look Media Works, Inc., Getty Images, Inc., the Society of Professional Journalists, the Radio Television Digital News Association, and the Reporters Committee for Freedom of the Press. urges the Supreme Court to consider if Buehler's arrest, on its face, was a retaliation for his exercise of First Amendment protected activity. And, that the court should consider the First Amendment implications more deeply than the lower courts have.

From the brief, amici counsel assert:

"This case is of national importance because this is but one example of an epidemic of harassment, interference and arrests by police of citizens and journalists for merely recording matters of public concern. If people are precluded from the opportunity to dispute the facts underlying grand jury indictments, police will have free reign to continue these chilling abridgments under color of law."

Read the full legal brief [here](#).