

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

COURTHOUSE NEWS SERVICE,

Plaintiff - Appellee,

v.

SARA OMUNDSON, in her official
capacity as Administrative Director
of Idaho Courts,

Defendant - Appellant.

No. 24-6697

D.C. No.
1:21-cv-00305-
DCN

OPINION

Appeal from the United States District Court
for the District of Idaho

David C. Nye, District Judge, Presiding

Argued and Submitted December 3, 2025
Portland, Oregon

Filed September 3, 2026

Before: M. Margaret McKeown and Jennifer Sung, Circuit
Judges, and Sidney A. Fitzwater, District Judge.*

Opinion by Judge McKeown;
Concurrence by Judge McKeown

* The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

SUMMARY**

Civil Rights

The panel affirmed the district court’s summary judgment for Courthouse News Service (CNS), a nationwide news service that reports on civil litigation, in its action challenging the Idaho courts’ policy of withholding newly filed complaints from the press and the public until after manual processing by court clerks.

Under Idaho’s “process-first” e-filing procedure, a submitted complaint sits in a local queue until a clerk performs a review of the submission and either accepts or rejects the complaint. When a clerk accepts a complaint, it is then instantaneously made available to the press and public. The process-first policy delays access to filed complaints for periods ranging from a few minutes to several days. CNS contends that those delays violate its First Amendment right of access to public court records.

Addressing jurisdiction, the panel first held that the district court did not err by declining to abstain under the principles of federalism and comity outlined in *O’Shea v. Littleton*, 414 U.S. 488 (1972). Abstention under *O’Shea* is unwarranted because the relief would not entangle the federal courts in ongoing administration of the state judicial system. Rather, once Idaho complies with access remedies already available to its courts, the First Amendment issue will be resolved.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel next reaffirmed this court’s holding in *CNS v. Planet*, 947 F.3d 581 (9th Cir. 2020), that the First Amendment right of public access to judicial documents attaches at the time a complaint is filed by the litigant, and not when the document is deemed filed or accepted by court administrative rule.

As to the merits, the panel held that Idaho’s process-first policy does not survive the rigorous scrutiny test set out in *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) and *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986). Idaho failed to meet its burden to prove that its asserted interests—clerical error prevention, reduced potential for public confusion, and protection of confidential information—would be substantially impaired by immediate access to newly filed complaints and that no reasonable alternative to its current policy exists that adequately protects those interests.

Concurring, Judge McKeown, joined by Judge Sung, wrote that in an earlier set of cases involving CNS and Ventura County Superior Court, while the court properly applied *Press-Enterprise* scrutiny, the court erred by calling that test “rigorous, but not strict.” She wrote separately to emphasize that under Supreme Court precedent *Press-Enterprise* scrutiny is a strict-scrutiny test, and should be applied as such.

COUNSEL

Jonathan G. Fetterly (argued), Katherine A. Keating, Roger Myers, Jonathan Fetterly, and Rachel E. Matteo-Boehm, Bryan Cave Leighton Paisner LLP, San Francisco, California; Amber N. Dina, Givens Pursley LLP, Boise, Idaho; for Plaintiff-Appellee.

Keely E. Duke (argued) and Molly E. Mitchell, Duke Evett PLLC, Boise, Idaho, for Defendant-Appellant.

Grayson Clary, Lisa Zycherman, Mara Gassmann, and Renee M. Griffin, Reporters Committee for Freedom of the Press, Washington, D.C., for Amici Curiae The Reporters Committee for Freedom of the Press and 23 Media Organizations.

OPINION

McKEOWN, Circuit Judge:

Courthouse News Service (CNS) is a nationwide news service that reports on civil litigation. This action is the latest in a series of challenges brought by CNS against state courts across the country in which CNS alleges that state-court administrative procedures violate its First Amendment right of public access to judicial documents. Here, CNS challenges the Idaho courts' policy of withholding newly filed complaints from the press and the public until after manual processing by court clerks. That policy delays access to filed complaints for periods ranging from a few minutes to several days.

We are not writing on a blank slate. An earlier set of cases involving CNS and Ventura County Superior Court in

California and its executive officer, Michael Planet (the *Planet* cases), sets the stage and resolves many issues here. As to jurisdiction, based on *Planet I*, we decline to abstain from hearing this case under the principles of *O’Shea v. Littleton*, 414 U.S. 488 (1974), because our decision does not entangle the federal courts in ongoing administration of the state judicial system. *CNS v. Planet*, 750 F.3d 776, 789–91 (9th Cir. 2014) (*Planet I*). This is a one-and-done proposition: once Idaho complies with access remedies already available to its courts, the First Amendment issue will be resolved. As to the merits, in *CNS v. Planet*, 947 F.3d 581, 585 (9th Cir. 2020) (*Planet III*), we held that “the press has a qualified right of timely access to newly filed civil nonconfidential complaints that attaches when the complaint is filed.” We reaffirm that the First Amendment right of public access to judicial documents attaches at the time that a complaint is filed *by the litigant*—or put differently, is *received* by the court—and not when the document is deemed filed or accepted by court administrative rule. In applying *Planet III*’s rigorous scrutiny test, we conclude that Idaho has not met its burden to prove that its asserted interests would be substantially impaired by immediate access to newly filed complaints and that no reasonable alternative to its current policy exists that adequately protects those interests. Accordingly, we affirm the district court’s order granting CNS’s motion for summary judgment and denying Idaho’s motion for summary judgment.

BACKGROUND

Courthouse News Service reports on civil litigation across all fifty states. It prepares free-to-access news articles, published on its website, as well as subscription-only news reports disseminated to its subscribers. The *Big Sky Report* is one of CNS’s subscription-only daily news

reports, covering civil complaints involving businesses and public entities in Montana, Wyoming, and Idaho. To prepare the *Big Sky Report* and its other news offerings, CNS's reporters daily review nonconfidential civil complaints filed in each state district court.¹

Sarah Omundson is the Administrative Director of the Idaho Courts and is responsible for the administration of statewide electronic filing (e-filing) and public access procedures. Between 2015 and 2018, Idaho courts migrated to an e-filing system (Odyssey) run by vendor Tyler Technologies. Odyssey permits litigants to e-file complaints from anywhere, at any time. Odyssey can be configured in several ways. The default configuration, which is used by Idaho, withholds newly filed complaints until after manual processing by court clerks.

Idaho's Rules for Electronic Filing and Service (IREFS) instruct that a clerk may either accept a complaint, at which point that complaint is deemed filed and released to the public, or reject it, which means that the complaint "will be deemed to have not been filed." IREFS 12(a)(2), 13(a). A clerk may reject a complaint because of an insufficient filing fee, because it is illegible or unreadable, because the case already exists or was filed in the wrong jurisdiction, because the complaint is unsigned or lacks a required case information sheet, or because the complaint must be filed under seal or contains confidential information. If the complaint is accepted for filing, the recorded date and time of filing relates back to the date and time that the filer submitted the document, and not the time at which the clerk

¹ CNS reviews only complaints in Idaho's "A.A. filing fee" category, which comprises civil cases in which the amount in controversy exceeds \$10,000.

accepted the complaint; the date and time of the filer's submission to Odyssey serves as the filing date relevant for purposes of meeting the statute of limitations and other filing deadlines. IREFS 12(a)(2).

There are two relevant alternative configurations of Odyssey. One, called Auto Accept, would accept and make public all complaints immediately upon submission by the filer. Virtually all federal district courts follow the Auto Accept model; once a new complaint is filed, it is immediately available via the PACER system. Similarly, state courts in Connecticut, Hawaii, and Nevada, among others, automatically accept and make public all submitted documents. Tyler Technologies would not charge Idaho courts any additional fees for the implementation of the Auto Accept configuration.

The second configuration under Odyssey creates a Press Review Queue, which provides the press and public with immediate access to submitted complaints, but still requires clerk review prior to deeming a complaint filed. Tyler Technologies would charge Idaho courts an annual subscription fee of \$108,000 for implementation of the Press Review Queue; there would also be a one-time cost associated with harmonizing court rules and e-filing processes with the Press Review Queue system. Courts in California, Georgia, New York, Texas, and Vermont require clerks to manually accept newly filed complaints but make those complaints public prior to the clerk processing.

Under Idaho's current e-filing procedure, which we call the "process-first" policy, a submitted complaint sits in a local queue until a clerk performs a review of the submission and either accepts or rejects the complaint. When a clerk accepts a complaint, it is then instantaneously made

available to the press and public. The parties agree that clerk processing itself takes only five minutes per complaint. Therefore, the delays relevant to this suit occur *prior* to the commencement of the clerk review process. As the district court found, “what takes time is not the individual review itself, but the county clerk finding time in their busy day to get the review done: going to the computer, getting logged into the system, accessing the documents, *and then* performing their five-minute review.”

Under Idaho’s process-first policy, complaints are typically made public between several hours and several days after submission. According to data compiled by the parties, more than forty percent of new complaints were not released to the public until the day after filing, with fifteen percent delayed two or more calendar days from the time of submission. Those delays are not spread evenly across the state. For example, the district court in Kootenai County, which includes Coeur D’Alene, withheld *every* complaint e-filed in April 2021 for at least one day, and 98% of complaints were withheld for two or more calendar days. CNS filed this suit, claiming that those delays violate its First Amendment right of access to public court records.

CNS has pursued similar litigation across the country for over a decade. *See, e.g., CNS v. Corsones*, 131 F.4th 59, 67 (2d Cir. 2025) (holding that the First Amendment right of access covers newly filed nonconfidential civil complaints); *CNS v. Schaefer*, 2 F.4th 318, 328 (4th Cir. 2021) (same); *CNS v. N.M. Admin. Off. of Cts.*, 53 F.4th 1245, 1265 (10th Cir. 2022) (same); *CNS. v. Brown*, 908 F.3d 1063, 1070, 1073 (7th Cir. 2018) (abstaining under *O’Shea v. Littleton*); *CNS v. Gilmer*, 48 F.4th 908, 915 (8th Cir. 2022) (declining to abstain).

CNS and Idaho filed cross-motions for summary judgment. The district court granted CNS's motion for summary judgment and denied Idaho's motion for summary judgment. The district court declined to abstain from exercising its jurisdiction and found that the First Amendment right of public access to judicial documents attaches at the moment the complaint is received by the court, that Idaho's policies implicated that right, and that Idaho's policies were unconstitutional after application of the rigorous scrutiny test applied in *Planet III*. We have jurisdiction under 28 U.S.C. § 1291 and, reviewing de novo, *Wilkins v. United States*, 163 F.4th 636, 643 (9th Cir. 2025), we affirm the district court.

ANALYSIS

I. The District Court Did Not Err by Exercising its Jurisdiction

We begin by addressing Idaho's claim that the district court erred by failing to abstain from exercising its jurisdiction under the principles of "federalism" and "comity" outlined in *O'Shea v. Littleton*, 414 U.S. 488, 499 (1972). We affirm the district court's refusal to abstain.

Federal courts "have a virtually unflagging obligation . . . to exercise the jurisdiction given them." *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 925 F.3d 1041, 1050 (9th Cir. 2019) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). The result is that abstention is an "extraordinary and narrow exception" to that duty. *Id.* at 1051 (same). That is a high bar to clear.

Abstention under *O'Shea* is unwarranted here because the relief would not result in "heavy federal interference in"

or an “ongoing federal audit” of the state judiciary. *Planet I*, 750 F.3d at 789–90 (quoting *L.A. Cnty. Bar Ass’n v. Eu*, 979 F.2d 697, 703 (9th Cir. 1992), then *E.T. v. Cantil-Sakauye*, 682 F.3d 1121, 1124 (9th Cir. 2011) (per curiam)). In *O’Shea*, Illinois residents sued two state-court judges they accused of intentionally and repeatedly engaging in misconduct in their administration of the criminal justice system, which allegedly infringed upon the residents’ constitutional rights. 414 U.S. at 490. After dismissing the case for failure to allege an actual case or controversy, the Supreme Court wrote that an injunction requiring federal oversight over the administration of a state’s criminal justice system would be “intrusive and unworkable,” and that any “ongoing federal audit of state criminal proceedings” would “indirectly accomplish the kind of interference that *Younger v. Harris* . . . and related cases sought to prevent.” *Id.* at 500. The Court was reluctant to impose structural equitable relief that would force federal courts to engage in ongoing supervision over the exercise of state judicial power.

Idaho argues that such supervision is at issue here. Confronted with this same argument on highly similar facts in *Planet I*, we reversed the district court’s decision to abstain under *O’Shea*. 750 F.3d at 779, 790–92. To begin, we underscored that “[w]e disfavor abstention in First Amendment cases because of the ‘risk . . . that the delay that results from abstention will itself chill the exercise of the rights that the plaintiffs seek to protect by suit.’” *Id.* at 787 (quoting *Porter v. Jones*, 319 F.3d 483, 487 (9th Cir. 2003)). In understanding our precedent under *O’Shea*, we held that “abstention is inappropriate where the requested relief may be achieved without an ongoing intrusion into the state’s administration of justice, but is appropriate where the relief sought would require the federal court to monitor the

substance of individual cases on an ongoing basis to administer its judgment.” *Id.* at 790. Without doubt, the circumstance here falls squarely in the category where abstention is inappropriate. *O’Shea* abstention is warranted only in cases “that would entail heavy federal interference in such sensitive state activities as administration of the judicial system.” *Id.* at 789–90 (quoting *Eu*, 979 F.2d at 703).

Requiring Idaho to implement a change to its statewide e-filing system would not engender any continuing federal-court oversight at all—Idaho need only effectuate a one-time switch to Auto Accept, Press Review Queue, or an equivalent system that provides timely press access. That change does not require the kind of entanglement, oversight, or supervision at issue in *O’Shea*. Instead, it resembles the “useful” and “clarifying” declaratory relief we issued in *Los Angeles County Bar Ass’n v. Eu*, where we held that for due process reasons, California provided for too few superior court judgeships in Los Angeles County. 979 F.2d at 703.

The Seventh Circuit in *CNS v. Brown*, 908 F.3d at 1070–75, is the only circuit to date that has affirmed a district court’s decision to abstain under *O’Shea* in CNS’s press-access litigation. See *Corsones*, 131 F.4th at 78 (affirming the district court’s decision not to abstain); *N.M. Admin. Off. of Cts.*, 53 F.4th at 1257–63 (same); *Schaefer*, 2 F.4th at 324–25 (same); *Gilmer*, 48 F.4th at 914–15 (reversing the district court’s decision to abstain). But in round three of the *Planet* cases, we expressly rejected the Seventh Circuit’s decision to “abstain from resolving the dispute about when the right [of public access] attaches and when delays are so long as to be tantamount to a denial of the right.” *Planet III*, 947 F.3d at 591 n.4.

Notwithstanding our prior rejection of the Seventh Circuit’s logic in *Brown*, Idaho wants us to adopt that circuit’s view and reverse the district court. Idaho attempts to distinguish Ventura County’s process-first policy in the *Planet* cases from its policy here because *Planet* was predicated on “the public’s right of access to judicial proceedings,” but here, CNS seeks access to documents “not yet . . . reviewed by the local court clerk,” which purportedly do not pertain to “judicial proceedings.” Idaho also argues that *Planet* involved “one clerk’s office in one county,” while this case involves “Idaho’s entire state judicial system.” Those are thin distinctions that do not alter our conclusions. As we elaborate upon in Part II, submitted, pre-process complaints are covered by the First Amendment right of access to judicial proceedings. Our abstention analysis does not change merely because CNS’s requested relief is statewide.

Whether reviewing de novo or for a modified abuse of discretion,² we affirm the district court’s decision to exercise its jurisdiction.³

² The standard of review applicable to the district court’s decision to abstain under *O’Shea* is “unsettled.” *Planet I*, 750 F.3d at 782. But we need not resolve that question here because we would affirm under either a de novo or abuse-of-discretion standard.

³ Idaho forfeited its additional contentions that the district court’s failure to abstain interferes with substantive law in Idaho, and that abstention is warranted because this case “does not involve ‘simple measures.’” Forfeiture is appropriate because the first theory was not brought up in the district court, *see Armstrong v. Brown*, 768 F.3d 975, 981 (9th Cir. 2014), and the second was not discussed in the Opening Brief, *United States v. Gianelli*, 543 F.3d 1178, 1184 n.6 (9th Cir. 2008). In any event, the theories are also unmoored from both *O’Shea* and *Younger*. Neither

II. The First Amendment Right of Public Access Attaches Upon Receipt of the Complaint by the Court

In *Planet III*, we addressed whether the First Amendment right of access attaches to civil complaints upon the complaint's filing or after clerk review. We definitively held that the right attaches upon filing. 947 F.3d at 591–92. Idaho endeavors to distinguish our holding by redefining when a complaint is “filed” by court administrative rule. Idaho draws a distinction between a plaintiff's submission of a complaint to the state court's e-filing system and the court clerk's ultimate decision to *deem* that complaint filed after processing. Under Idaho's theory, because submitted but pre-process complaints are not “judicial documents,” any amount of delay in press access to submitted complaints is permissible so long as a clerk has not yet deemed a complaint filed. The notion that a filed complaint is not a “judicial document” defies common sense. Moreover, that logic cannot be squared with the scope of the right articulated in *Planet III*.

In *Planet III*, we evaluated Ventura County's policy of having court processing assistants and supervisors review complaints prior to placing paper copies in the “media bin” for public access. *Id.* at 586. That policy led to “significant delays” of two or more court days “between the filing of a complaint and its availability to CNS.” *Id.* at 587. The court in *Planet III* plainly understood filing a complaint to be an action undertaken by the *litigant*, and not by a court official. *See id.* at 596 (“[L]itigants . . . are filing [complaints] with a court, making them subject to judicial administration.”); *id.*

case discusses interference with state substantive law or the complexity of one-time relief as factors relevant to the decision to abstain.

at 597 (“California Rule of Court 1.201(b) requires the filer—*not the court*—to exclude or redact private information from publicly filed judicial documents.” (emphasis added)); *id.* at 588, 594 (affirming the district court’s interpretation of the First Amendment right of access, which was defined as attaching “when the complaint is received by the court”).

Idaho argues that although the complaints received by the Ventura County court in *Planet III* were “judicial documents,” those received by its courts through Odyssey are not. We are at a loss to understand this argument. That the complaints in *Planet III* were paper filings, and not electronic, does not meaningfully affect our analysis. Idaho emphasizes that the documents in *Planet III* had already been reviewed and accepted by the clerk into the court’s file. While true, that distinction was irrelevant to the holding, which linked the First Amendment right to the *litigant’s* filing of the complaint. *Id.* at 594. Finally, Idaho uses an extended—but unpersuasive—metaphor:

[A] submitted complaint awaiting review in the e-filing system is the equivalent of a paper complaint in the hands of an intended filer standing at the clerk’s countertop. It has not yet been accepted, and thus does not meet the “judicial document” standard.

The Tenth Circuit rejected this same metaphor, stating that “[w]hile filers waiting in line at the clerk’s window have not yet submitted their paper complaints to the court, electronic complaints waiting in the digital queue have already been submitted by the filer and received by the court.” *N.M. Admin. Off. of Cts.*, 53 F.4th at 1267.

Judicial documents are items “filed with a court that [are] ‘relevant to the judicial function and useful in the judicial process.’” *Planet III*, 947 F.3d at 592 (quoting *Judicial Document*, *Black’s Law Dictionary* (10th ed. 2014)). By that definition, whether a complaint is a judicial document depends on whether the document is *filed*—the very issue that CNS and Idaho contest here. Whether a complaint has been filed fundamentally turns on control over the document: if a litigant is waiting in line at the clerk’s office, the litigant maintains control over the complaint because she may choose to leave the line, or the court may close for the day and decline any further filings. After e-filing has been initiated, however, the court system has assumed control over the complaint, and “the authority of the people of the [jurisdiction] is thereby invoked.” *Planet III*, 947 F.3d at 593. Submitted complaints, even those before processing, are “judicial documents” within the meaning of *Planet III* and its articulated right of public access.

Idaho’s narrow reading of the right of public access would eviscerate the core interest protected by that right. In *Planet III*, we were clear that “a necessary corollary of the right to access is a right to *timely* access.” *Id.* at 594 (emphasis added). CNS’s reporting “must be timely to be newsworthy and to allow for ample and meaningful public discussion regarding the functioning of our nation’s court systems.” *Id.* (citing *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 604–05 (1982) and *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897–98 (7th Cir. 1994)). The core public interest that the First Amendment right of public access protects includes “obtaining contemporaneous news.” *Id.* The principle of timely, contemporaneous reporting has been made all the more important in the internet and social media world. As noted by amici

Reporters Committee for Freedom of the Press and other media organizations, “a delay of even a few business hours can result in a denial of meaningful access, both for reporters themselves and for the public which relies on the press for information. Prompt access to civil complaints ensures that the public learns about important cases while they are still newsworthy. . . .” Under Idaho’s restrictive conception of the public-access right, pre-process delays would be constitutionally irrelevant, despite those delays routinely lasting as long as those we deemed “significant” when striking down Ventura County’s analogous process-first policy in *Planet III*. 947 F.3d at 587.

Adopting Idaho’s reading of the right—with its counterintuitive, technical definitions of “filing,” “submission,” and “acceptance”—would permit any court to undermine the press’s right to timely access through the implementation of lengthy processing, pre-filing delays, all via state or local administrative rule. But as the Supreme Court has counseled, “no rule of court can . . . abrogate or modify the substantive law.” *Wash.-S. Nav. Co. v. Balt. & Phila. Steamboat Co.*, 263 U.S. 629, 635 (1924); *see also N.M. Admin. Off. of Cts.*, 53 F.4th at 1261–62 (“[T]he First Amendment right of access attaches to complaints when the court *receives* them, regardless of the technical terms and clerical processes used by the court.”).

None of Idaho’s arguments overcome our precedent in *Planet III*, which directly controls here: the First Amendment right of public access to judicial documents attaches at the time that complaints are filed with the court

by the litigant, or put differently, at the time that complaints are received by the court.⁴

III. Idaho's Process-First Policy Does Not Survive *Press-Enterprise* Scrutiny

As we have acknowledged, there is no absolute right of access that “entitle[s] the press to immediate access to [recently filed] complaints.” *Planet III*, 947 F.3d at 585. Instead, the right is qualified: press and public access to newly filed complaints may be constitutionally delayed, but only if the state’s access restrictions survive the rigorous scrutiny test set out in the *Press-Enterprise* cases. *Planet III*, 947 F.3d at 595. Because the First Amendment right of public access covers CNS’s request to access newly filed complaints, a presumption of access exists. Idaho bears the burden of proving that its process-first policy complies with *Press-Enterprise* scrutiny.⁵ *Id.*

The First Amendment right of public access emerges from *Globe Newspaper Co. v. Superior Court*, in which the

⁴ Because the nature of the judicial proceeding in this case is identical to that analyzed in *Planet III*, we do not need to apply the “experience and logic” test set out in *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 9 (1986) (*Press-Enterprise II*). That test is the means by which a reviewing court determines whether a qualified First Amendment right of public access attaches to a particular judicial proceeding. *Id.* at 8–10. We applied that test in *Planet III* to “newly filed nonconfidential civil complaints,” precisely the same records to which CNS seeks access here. 947 F.3d at 590–91.

⁵ By arguing that the length of time between a document’s submission and the clerk’s processing is too insignificant to violate the constitutional right, Idaho endeavors to flip this presumption. But the nature of the qualified right is that *any* policy that institutes a delay must be adequately justified. And the delays here are on par with delays that did not pass constitutional muster in *Planet III*. 947 F.3d at 587.

Supreme Court subjected a violation of the right of public access to criminal trials to strict scrutiny. 457 U.S. 596, 606–07 (1982). Two years later, in *Press-Enterprise I*, the Court cited to the strict-scrutiny standard from *Globe Newspaper* and went on to hold that the access to court proceedings may be restricted only if “closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enterprise Co. v. Superior Ct.*, 464 U.S. 501, 510 (1984) (*Press-Enterprise I*). In *Press-Enterprise II*, the Court reaffirmed the *Press-Enterprise I* standard and put it to the test by asking whether there was a “substantial probability” that there was an impairment of a higher value, and whether “reasonable alternatives . . . [could not] adequately protect” that interest. 478 U.S. at 14.

Idaho advances three interests that underlie its process-first policy: clerical error prevention, reduced potential for public confusion, and protection of confidential information.

Immediate press access to newly filed complaints does not mean that Idaho must eliminate clerk review or error correction of submitted complaints. Indeed, the district court did not order the elimination of review, and CNS does not seek such a remedy. Idaho could, for example, implement the Press Review Queue function, providing the press with immediate access while still requiring clerk review before a complaint is accepted by the court. But even if Idaho were to automatically accept complaints, doing so would not require eliminating clerk review.

Idaho argues that under its current administrative rules, all error correction that occurs after a complaint has been accepted by a court clerk must be addressed by judicial action, which would unduly burden the judiciary. But, as the district court found, there is no compelling reason that judges

must serve that function. Idaho could easily modify its administrative rules to permit clerks to remedy filing or clerical errors even after acceptance. As the court observed, “[the court administrator] readily admits that the Idaho Supreme Court could amend that rule to provide the clerk with more flexibility.” Because “no rule of court can . . . abrogate or modify the substantive law,” compliance with a court’s administrative rules cannot serve as a higher value for purposes of *Press-Enterprise* scrutiny. *Wash.-S. Nav. Co.*, 263 U.S. at 635. Were it otherwise, courts could leverage such rules to evade constitutional scrutiny whenever their court-access policies come into conflict with the First Amendment. When court administrative rules and a constitutional right collide, the constitutional right prevails.

Idaho’s claimed interest in preventing public confusion is merely another way of advocating for maintenance of the status quo. What confusion? This concern can be addressed, for example, by clarifying administrative rules, or by stamping all post-acceptance, pre-review complaints with a notice that the complaint has not yet been reviewed by the Clerk’s office. One of our sister circuits has already rejected this rationale. *See N.M. Admin. Off. of Cts.*, 53 F.4th at 1268–69.

Finally, Idaho’s interest in protecting litigant and third-party confidentiality is not, properly construed, Idaho’s duty at all—it is the duty of filer, and not the clerk or the Idaho courts, to ensure that sensitive information is redacted or that the complaint is filed under seal. *See* IREFS 15(a) (“It is the responsibility of the filer to ensure that protected personal data identifiers are omitted or redacted from documents before the documents are filed. . . . The clerk of the court will not review filings to determine whether appropriate

omissions or redactions have been made.”); *see also Planet III*, 947 F.3d at 597 (rejecting Ventura County’s assertion of an interest in protecting confidentiality). And Idaho appears to make a mountain out of a molehill. Between January 2020 and July 2022, there was only one category A.A. complaint filed with a motion or request for sealing. Accordingly, preventing the dissemination of confidential information cannot serve as a compelling interest of the state under *Press-Enterprise* scrutiny.

Even if Idaho had met its burden under the first prong of *Press-Enterprise* scrutiny, which it has not, Idaho has not demonstrated that there is no reasonable alternative to its current process-first policy.

Idaho is not without options. At least one reasonable alternative to Idaho’s process-first policy already exists: Odyssey’s Auto Accept configuration, under which complaints would be immediately accepted and made public upon filing. Idaho argues that using Auto Accept would be unreasonable because of increased costs and confidentiality concerns. But it is uncontested that Tyler Technologies would not charge Idaho any subscription fee to implement the Auto Accept configuration. While there may be some costs affiliated with harmonizing the Idaho courts’ policies and procedures with the Auto Accept system, Idaho makes no attempt to estimate or document those costs in its briefing. Idaho’s conclusory assertions as to increased costs do not make Auto Accept an unreasonable alternative to its process-first policy. Likewise, Idaho’s assertion that Auto Accept would be unable to protect against the disclosure of confidential information must be set aside. Idaho never explains what confidential information would be filtered out by a clerk’s five-minute-per-complaint review, much less why that information would “erode public confidence in the

judiciary,” especially given that it is the filer’s duty to circumscribe confidential information.

In sum, Idaho has failed to demonstrate that automatically accepting newly filed complaints is an unreasonable alternative to its current unconstitutional process-first policy. Accordingly, Idaho has not proven that its process-first policy survives *Press-Enterprise* scrutiny.

We are sensitive to Idaho’s concerns about making changes to the courts’ e-filing system. To be clear, we are not requiring Idaho to adopt Tyler Technologies’ Auto Accept product. We hold only that Idaho’s current process-first policy violates CNS’s First Amendment right of timely, public access to newly filed complaints in the A.A. filing fee category. Idaho is free to restructure its public-access policy as it sees fit, so long as that policy incurs only delays that are justifiable under the rigorous *Press-Enterprise* test.

AFFIRMED.

McKEOWN, Circuit Judge, with whom SUNG, Circuit Judge, joins, concurring:

The right of public access to judicial proceedings “ensure[s] that the individual citizen can effectively participate in and contribute to our republican system of self-government.” *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604 (1982). The right therefore falls within the heart of the First Amendment’s coverage. And because it exists in that heartland, potential violations of the right should be evaluated under strict scrutiny. *See* David S. Ardia, *Sealed Justice: Federal Courts’ Inconsistent Record-Sealing Rules and Their Impact on Judicial Transparency*, 6 J. Free Speech L. 211, 230–31 (2025).

Our court, in the *Planet* cases, misidentified Ventura County’s process-first policy as a time, place, and manner (TPM) restriction. *CNS v. Planet*, 947 F.3d 581, 595 (9th Cir. 2020) (*Planet III*). But TPM restrictions in the court public-access context are those that resemble regulations of speaker behavior inside a courtroom, *Globe Newspaper Co.*, 457 U.S. at 607 n.17, not those that would delay or deny public access to a judicial proceeding. That error, which originated in our court, has proliferated in our sister circuits as CNS continues to litigate this issue across the country. *See CNS v. Schaefer*, 2 F.4th 318, 328 (4th Cir. 2021) (“The Clerks’ practices do indeed resemble time, place, and manner restrictions, so we apply more relaxed scrutiny.”); *CNS v. N.M. Admin. Off. of Cts.*, 53 F.4th 1245, 1270 (10th Cir. 2022) (same); *but see CNS v. Corsones*, 131 F.4th 59, 73–74 (2d Cir. 2025) (“[W]e do not believe the delays in releasing court documents such as complaints to the public are properly described as ‘time, place, and manner’ restrictions.”).

In *Planet III*, two wrongs made a right. Notwithstanding the identification of Ventura County's policy as a TPM restriction, the court properly applied the standard crafted by the Supreme Court in *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984) (*Press-Enterprise I*) and *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 14 (1986) (*Press-Enterprise II*)—what I call “*Press-Enterprise* scrutiny.” The court erred by calling that test “rigorous, but not strict,” *Planet III*, 947 F.3d at 596 (citation modified), but applied the correct test and came to the correct conclusion. Indeed, every court to have reached the merits of CNS's challenges to process-first policies has applied *Press-Enterprise* scrutiny.

I write separately only to emphasize that, under Supreme Court precedent, *Press-Enterprise* scrutiny is a strict-scrutiny test, and should be applied as such.

I. The Creation of *Press-Enterprise* Scrutiny

The First Amendment right of public access to judicial proceedings was cemented by the Supreme Court nearly forty-five years ago in *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982). Building on its plurality opinion in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), in which seven members of the fractured Court recognized a First Amendment right of public and press access to criminal trials, the Court in *Globe Newspaper* reaffirmed the existence of a qualified right of access to judicial proceedings and held that denials of that access are subject to strict scrutiny. 457 U.S. at 606–07 (“Where, as in the present case, the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling

governmental interest, and is narrowly tailored to serve that interest.”).

The Court additionally noted that “limitations on the right of access that resemble ‘time, place, and manner’ restrictions on protected speech would not be subjected to such scrutiny.” *Id.* at 607 n.17 (citation omitted). Such regulations would instead receive intermediate scrutiny. *Id.* (citing *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50, 63 n.18 (1976)). In support of that principle, the Court in *Globe Newspaper* cited various separate opinions of the Court in *Richmond Newspapers*, which emphasized that regulation of courtroom decorum would still be permitted notwithstanding the newly recognized First Amendment right. *See Richmond Newspapers*, 448 U.S. at 581–82 & n.18 (plurality op.); *id.* at 598 n.23 (Brennan, J., concurring in the judgment); *id.* at 600 (Stewart, J., concurring in the judgment) (“Much more than a city street, a trial courtroom must be a quiet and orderly place.”).

So, out of *Globe Newspaper*, two distinct standards emerged: strict scrutiny for denials of access to criminal trials, and intermediate scrutiny for TPM restrictions, akin to those that regulate conduct in the courtroom.

The Court further developed that scrutiny framework in the *Press-Enterprise* cases. In *Press-Enterprise I*, the Court cited *Globe Newspaper*’s recitation of the general strict scrutiny standard, and immediately followed with a formulation of that standard tailored to the right of public access: “The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” 464 U.S. at 509–10.

Read in context, it is clear that the Court in *Press-Enterprise I* applied strict scrutiny. There is no mention of TPM restrictions; no citation to footnote 17 of *Globe Newspaper*; and the case deals with an absolute denial of access to a court proceeding. Properly understood, then, the test developed in *Press-Enterprise I*—which was reaffirmed in *Press-Enterprise II*—is a form of strict scrutiny that applies to denials of access to court proceedings.

II. Process-First Policies Do Not Resemble Time, Place, and Manner Restrictions

Here, Idaho's process-first policy resembles a denial of access, as in *Globe Newspaper*, *Press-Enterprise I*, and *Press-Enterprise II*, and not a TPM restriction. Time, place, and manner restrictions limit (but do not entirely prohibit) expressive activity based on a content-neutral characteristic in order to further an important governmental interest unrelated to the restriction of communication. *See, e.g., Heffron v. Int'l Soc'y for Krishna Consciousness, Inc. (ISKCON)*, 452 U.S. 640, 647–48 (1981). That a government regulation is content-neutral does not automatically mean that the regulation is a TPM restriction. One key characteristic of TPM restrictions is that they operate *upon a speaker* (or actor engaged in similarly expressive activity). *See, e.g., ISKCON*, 452 U.S. at 648 (worshippers' speech limited at state fair); *Ward v. Rock Against Racism*, 491 U.S. 781, 785–88 (1989) (rock band's music limited in park).

In this case, the at-issue conduct is CNS's access to newly filed complaints. It is not clear how a TPM restriction would apply directly to the right of access, which is protected by the First Amendment in order to *facilitate* expressive activity, but is not itself inherently expressive.

See, e.g., Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293 (1984) (“*Expression*, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions.” (emphasis added)).

And for a TPM restriction to survive intermediate scrutiny, it is black letter law that it must “leave open ample alternative channels for communication of the information.” *Ward*, 491 U.S. at 791 (quoting *Clark*, 468 U.S. at 293). But as the majority noted in *Planet III*, that requirement is nonsensical as applied to a policy like Idaho’s process-first policy, because “there is only one way CNS can access the new complaints: the court clerk’s office.” 947 F.3d at 596 n.9. The Second Circuit, in *CNS v. Corsones*, noted that Vermont’s process-first policy did not resemble a TPS restriction for precisely that reason. 131 F.4th at 73 (“[W]here a court withholds public access to a complaint, there may be no alternative channel for the public to become aware of the complaint and its substance.”).

I therefore do not believe that Idaho’s process-first policy in this case resembles a TPM restriction. When the Supreme Court created the bifurcated scrutiny approach in *Globe Newspaper*, its cited examples of conduct subject to intermediate scrutiny pertained to the in-courtroom conduct of speakers—a kind of regulation wholly unlike Idaho’s process-first policy here.

We made clear in *Planet III* that because “[t]he newsworthiness of a particular story is often fleeting[,] [t]o delay or postpone disclosure undermines the benefit of public scrutiny.” 947 F.3d at 594 (quoting *Grove Fresh Distribs. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994)). Idaho’s policy therefore can be characterized as the kind of access-denial at issue in *Globe Newspaper Co.* and

the *Press-Enterprise* cases, and should be evaluated under strict scrutiny. I do not see how a policy that “may have the same result as complete suppression,” *Planet III*, 947 F.3d at 594 (quoting *Grove Fresh*, 24 F.3d at 897), could be subject to anything less.

III. So What?

The *Planet III* majority applied *Press-Enterprise* scrutiny to Ventura County’s process-first policy, albeit under the guise of applying a lesser form of scrutiny¹—which it called “rigorous, but not strict.”² 947 F.3d at 596 (citation modified).

Does it matter? In the end, we applied the same test, and we reached the same result. Indeed, every circuit to have reached the merits of one of CNS’s challenges to process-first policies has applied *Press-Enterprise* scrutiny. See *Planet III*, 947 F.3d at 585; *Corsones*, 131 F.3d at 68–72; *Schaefer*, 2 F.4th at 328; *N.M. Admin. Off. of Cts.*, 53 F.4th at 1270.

Some of our sister circuits have elucidated the stakes. The Second Circuit, for example, wrote, “[a]pplying strict scrutiny to a state practice or policy generally means its

¹ Judge N.R. Smith, in a concurrence, broke with the majority as to the relevant scrutiny standard. He agreed that Ventura County’s process-first policy resembled a TPM restriction, but then wrote that ordinary First Amendment intermediate scrutiny should apply. He provided no explanation for *why* Ventura County’s policy was a TPM restriction. *Planet III*, 947 F.3d at 600–606.

² The court in *Planet III* cited *Leigh v. Salazar*, 677 F.3d 892, 900 (9th Cir. 2012), for its characterization of *Press-Enterprise* scrutiny as “rigorous,” but itself supplies that “rigorous” does not mean “strict.” *Planet III*, 947 F.3d at 596. *Leigh* does not by its own terms label *Press-Enterprise* as either strict scrutiny or not. 677 F.3d at 900.

death knell. . . . In contrast, the *Press-Enterprise II* standard will permit courts to uphold many practices and policies. If the state's objective is sufficiently valuable to qualify as a higher value, and the delay imposed to achieve it is reasonable, it has a high likelihood of passing muster." *Corsones*, 131 F.4th at 73.

Some courts too have intimated that shorter access delays are inherently more likely to survive constitutional review. *See, e.g., Planet III*, 947 F.3d at 595 ("An incidental delay of the right of access does not pose such inherent dangers to free expression . . . as to justify application of the most exacting level of First Amendment scrutiny." (citation modified)); *Corsones*, 131 F.4th at 73. But under strict *Press-Enterprise* scrutiny, any access delay—no matter how short—must be sufficiently justified by the state in order to survive. *Press-Enterprise I*'s "presumption of openness" is strong: the relevant counterfactual must be a world in which the state imposes virtually no delay upon access to the judicial proceeding. 464 U.S. at 510. In our digital world, this means that there often should be no delay in access at all.

It should be very difficult to survive *Press-Enterprise* scrutiny. The First Amendment right of public access to judicial proceedings "protect[s] the free discussion of governmental affairs," which lies at the heart of the First Amendment. *Globe Newspaper Co.*, 457 U.S. at 604 (citation modified). The watchful eyes of the public and free press are essential to the functioning of our government. When unconstitutional closure occurs, appeal to the judiciary is often the only method by which the press can have its rights vindicated. *Leigh*, 677 F.3d at 900. A state may impose an access delay only so long as its policy can

survive our most exacting scrutiny. Such is the importance of the First Amendment right of public access.