

No. 25-\_\_\_\_\_

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**In the Supreme Court of the United States**

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DAN MCCALED,  
PETITIONER

*v.*

MICHELLE LONG, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE TENNESSEE ADMINISTRATIVE OFFICE OF THE COURTS,  
RESPONDENT.

\_\_\_\_\_  
*ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT*

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

1. In determining whether the public has a right to access meetings of the Tennessee Judicial Advisory Commission, must a court apply the “experience and logic” test prescribed by *Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555 (1980), or is *Houchins v. KQED, Inc.*, 438 U.S. 1, 15 (1978) still the governing rule?

**PARTIES TO THE PROCEEDINGS  
AND RULE 29.6 STATEMENT**

Petitioner, a Plaintiff-Appellant in the court below, is Dan McCaleb.

Respondent, Michelle Long, is Director of the Tennessee Administrative Office of the Courts.

Because no Petitioner is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

**TABLE OF CONTENTS**

QUESTION PRESENTED ..... i

PARTIES TO THE PROCEEDINGS AND  
RULE 29.6 STATEMENT ..... ii

OPINIONS BELOW ..... 1

JURISDICTION ..... 1

STATUTES INVOLVED ..... 1

STATEMENT OF THE CASE ..... 2

    A. Background on Tennessee’s Judicial  
        Advisory Commission ..... 2

    B. Closure of the Judicial Advisory Com-  
        mission’s Meetings ..... 2

    C. Procedural History ..... 3

REASONS FOR GRANTING THE PETI-  
TION ..... 4

CONCLUSION ..... 8

## TABLE OF AUTHORITIES

### Cases

<i>Calder v. I.R.S.</i> , 890 F.2d 781 (5th Cir. 1989).....	7
<i>Detroit Free Press v. Ashcroft</i> , 303 F.3d 681 (6th Cir. 2002).....	7
<i>El Dia, Inc. v. Hernandez Colon</i> , 963 F.2d 488 (1st Cir. 1992) .....	7
<i>Flynt v. Rumsfeld</i> , 355 F.3d 697 (D.C. Cir. 2004).....	7
<i>Fusaro v. Cogan</i> , 930 F.3d 241 (4th Cir. 2019).....	7
<i>Houchins v. KQED, Inc.</i> , 438 U.S. 1 (1978).....	4, 5
<i>Index Newspapers LLC v. United States Marshals Serv.</i> , 977 F.3d 817 (9th Cir. 2020).....	6
<i>Indianapolis Star v. United States</i> , 692 F.3d 424 (6th Cir. 2012).....	6
<i>Lanphere &amp; Urbaniak v. State of Colo.</i> , 21 F.3d 1508 (10th Cir. 1994).....	7
<i>N. Jersey Media Grp., Inc. v. Ashcroft</i> , 308 F.3d 198 (3d Cir. 2002) .....	6
<i>Richmond Newspapers v. Virginia</i> , 448 U.S. 555 (1980).....	4, 6
<i>Travis v. Reno</i> , 163 F.3d 1000 (7th Cir. 1998).....	7

<i>Wellons v. Comm’r, Ga. Dep’t of Corr.</i> , 754 F.3d 1260 (11th Cir. 2014).....	6
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### **Statutes**

28 U.S.C. § 1254 .....	1
28 U.S.C. § 1291 .....	1
28 U.S.C. § 2201 .....	1
28 U.S.C. §2202 .....	1
42 U.S.C. § 1983 .....	1
Tenn. Code Ann. § 16-3-601 .....	2

### **Other Authorities**

<i>Advisory Commission the Rules of Practice &amp; Procedure</i> , YouTube (June 9, 2023) .....	3
<i>December Rules Commission Meeting</i> , YouTube (Dec. 8, 2023).....	3
Matthew L. Schafer, <i>Does Houchins v. KQED, Inc. Matter?</i> 70 Buff. L. Rev. 1331 (2022) .....	7
<i>Media Right of Access</i> , 92 Harv. L. Rev. 174, 183-84 (1978).....	5
William Bennett Turner, <i>Chief Justice Roberts’ Surprising Views on the Public’s Right to Know</i> , Bloomberg Law (Feb. 19, 2020).....	6

### **Rules**

Fed. R. App. P. 4.....	1
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## **OPINIONS BELOW**

The opinion of the Court of Appeals (App. 1a) is reported at 152 F.4th 728. The opinion of the District Court (App. 16a) is available at 2024 WL 4846832.

## **JURISDICTION**

The district court had jurisdiction under 28 U.S.C. § 1331 because the claim presents a federal question arising under the First Amendment of the U.S. Constitution and 42 U.S.C. § 1983. The district court also had jurisdiction under 28 U.S.C. §§ 2201, 2202.

On November 20, 2024, the district court issued an opinion granting Defendant-Appellee's motion for summary judgment and denying Plaintiff-Appellant's summary judgment motion. App. 16.

The Sixth Circuit had jurisdiction over the appeal under 28 U.S.C. § 1291 because the district court's Judgment was a final decision. See also Fed. R. App. P. 4(a)(1)(A).

On September 16, 2025, the Sixth Circuit affirmed. App. 1a.

On December 5, 2025, Petitioner filed an application to extend time to file his petition for a writ of certiorari to February 13, 2026. That application was granted on January 14, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## **STATUTES INVOLVED**

The First Amendment says that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging

the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

## STATEMENT OF THE CASE

This case is about whether the First Amendment protects the right of the public and journalists such as Petitioner Dan McCaleb to access meetings of the Tennessee Judicial Advisory Commission.

### **A. Background on Tennessee’s Judicial Advisory Commission**

The Tennessee General Assembly established the Judicial Advisory Commission—a body whose members are appointed by the Tennessee Supreme Court, whose duty is to “advise the supreme court from time to time respecting the rules of practice and procedure.” Tenn. Code Ann. § 16-3-601, et. seq.

The Tennessee Supreme Court appoints members of the Advisory Commission. App. 3a.

### **B. Closure of the Judicial Advisory Commission’s Meetings**

Before 2018, Advisory Commission meetings were open to the public. They have been closed, however, since a 2018 incident in which a member of the public was verbally (but not physically) disruptive during one of the Commission’s meetings. App. 19a.

The Advisory Commission’s meetings were temporarily reopened to the media and the public under a preliminary injunction that the district court entered in this case. App. 20a. Two meetings held in 2023, in June and December, were available for the public to attend virtually, and video of the meetings remains

online. *Id.*<sup>1</sup> The Administrative Office of the Courts posted a public notice of each meeting in advance.<sup>2</sup>

### C. Procedural History

Petitioner Dan McCaleb filed a Complaint for Declaratory and Injunctive Relief against Defendant-Appellee Michelle Long in her official capacity as Director of the Tennessee Administrative Office of the Courts. McCaleb’s lawsuit alleges that Long’s exclusion of the public from Tennessee Advisory Commission meeting violates his First Amendment right to free speech. App. 20a.

The district court initially partially granted McCaleb’s motion for a preliminary injunction requiring that the meetings be properly noticed and live-streamed. App. 19-20a. Subsequently, the district court issued an opinion granting Long’s motion for summary judgment and denying McCaleb’s motion—

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<sup>1</sup> See *Advisory Commission the Rules of Practice & Procedure*, YouTube (June 9, 2023), <https://www.youtube.com/watch?v=TCCKGHybsxg> (last visited Mar. 13, 2025); *December Rules Commission Meeting*, YouTube (Dec. 8, 2023), <https://www.youtube.com/watch?v=XHY3DFF3V2E> (last visited Mar. 13, 2025).

<sup>2</sup> See *Advisory Commission on the Rules of Practice & Procedure*, <https://www.tncourts.gov/calendar/public-meeting-notices/2023/06/09/advisory-commission-rules-practice-procedure> (last visited Mar. 13, 2025); *Advisory Commission on the Rules of Practice & Procedure*, <https://www.tncourts.gov/calendar/public-meeting-notices/2023/12/08/advisory-commission-rules-practice-and-procedure> (last visited Mar. 13, 2025).

departing from the view of the merits it had expressed in its order granting a preliminary injunction. Memorandum App. 16a.

The Sixth Circuit affirmed. App. 1a. This appeal followed.

### REASONS FOR GRANTING THE PETITION

This Court is the only body that can resolve the circuit split as to whether claims like McCaleb’s are to be governed by *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980), or by *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978).

In *Houchins*, a three-justice plurality and single-justice concurrence expressed the view that the First and Fourteenth Amendments provide no public right of access to government information. *Houchins*, 438 U.S. at 15; *id.* at 16-17 (Stewart, J., concurring). But that case was brought under the First Amendment’s Press Clause, not the Speech Clause, and concerned only whether the press has a *special* right to access information “over and above that of other persons.” 438 U.S. at 3.

*Houchins* is not a case about public access to government proceedings. In that case, a media organization argued that the Press Clause of the First Amendment gave it a “special right of access to government-controlled sources of information” that entitled it to access a portion of a local jail to take photographs and interview prisoners about conditions there. 438 U.S. at 7-8. A three-justice plurality opinion rejected that argument, concluding that “the media [had] no special right of access to the [jail] different from or greater than that accorded the public generally.” *Id.* at 16.

In reaching that conclusion, the *Houchins* plurality appeared to sweep broadly in stating that “[n]either the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government’s control.” *Id.* at 15. A concurring opinion by Justice Stewart similarly stated that “[t]he First and Fourteenth Amendments do not guarantee the public a right of access to information generated or controlled by the government”—though he also stated that the media organization “was clearly entitled to some form of preliminary injunctive relief” to give the press “effective access to the same areas” that the public could access. *Id.* at 16-17 (Stewart, J., concurring). Three justices dissented, while two others did not participate. *Id.* at 19-40 (Stevens, J., dissenting).

Soon after the Court decided *Houchins*, a Harvard Law Review comment observed that the case should not be read as holding that there is never a First Amendment right to access any government information: “General pronouncements in the opinion that seem to deny any public right clearly should be read in context as denying anyone special rights, since only this latter issue was argued and analyzed, and the district court’s order granted injunctive relief only to representatives of the media.” *Media Right of Access*, 92 Harv. L. Rev. 174, 183-84 (1978) (emphasis added). Though the comment was unsigned, it is now known that its author was future Chief Justice John Roberts. See William Bennett Turner, *Chief Justice Roberts’*

*Surprising Views on the Public’s Right to Know*, Bloomberg Law (Feb. 19, 2020).<sup>3</sup>

Two years later, in *Richmond Newspapers*, the Court apparently agreed, holding that the First Amendment *does* protect the public’s right to access certain government proceedings—specifically, criminal trials—to prevent arbitrary restriction of the information about which the public may speak. 448 U.S. at 575-78. From *Richmond Newspapers*, courts have derived an “experience and logic” test to determine whether the First Amendment protects public access to a particular proceeding. That test considers (1) whether “the proceeding ‘has historically been open to the press and the general public’” and (2) whether “public access plays a significant positive role in the functioning of the particular process in question.” *Indianapolis Star v. United States*, 692, 429 F.3d 424 (6th Cir. 2012).

Although *Richmond Newspapers* does not directly mention *Houchins*, the two cases are in conflict. Some courts have held that the *Richmond Newspapers* test applies generally in cases where plaintiffs seek access to government proceedings. *See, e.g., Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 830 n.8 (9th Cir. 2020) (“by its terms the [*Richmond Newspapers*] test is not limited to any particular type of plaintiff or any particular type of forum”); *N. Jersey Media Grp., Inc. v. Ashcroft*, 308 F.3d 198, 201 (3d Cir. 2002); *Wellons v. Comm’r, Ga. Dep’t of Corr.*, 754 F.3d 1260, 1266 (11th Cir. 2014). Some oth-

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<sup>3</sup> <https://news.bloomberglaw.com/us-law-week/insight-chief-justice-roberts-surprising-views-on-the-publics-right-to-know>.

ers, however, have construed the *Richmond Newspapers* test as a “narrow exception” to *Houchins*’s supposed general rule that the First Amendment gives the public no right to access government information. *Flynt v. Rumsfeld*, 355 F.3d 697, 704 (D.C. Cir. 2004); *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488, 495 (1st Cir. 1992); *Fusaro v. Cogan*, 930 F.3d 241, 250 (4th Cir. 2019); *Calder v. I.R.S.*, 890 F.2d 781, 783 (5th Cir. 1989); *Travis v. Reno*, 163 F.3d 1000, 1007 (7th Cir. 1998); *Lanphere & Urbaniak v. State of Colo.*, 21 F.3d 1508, 1511 (10th Cir. 1994). See also Matthew L. Schafer, *Does Houchins v. KQED, Inc. Matter?* 70 Buff. L. Rev. 1331, 1420-33 (2022).

Here, the Sixth Circuit took the latter approach, calling *Richmond Newspapers* “an exception to the general rule.” App. 5a. This was despite also acknowledging that Sixth Circuit had previously extended the *Richmond Newspapers* test to adjudicatory proceedings by executive agencies. App. 6a, citing *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 696 (6th Cir. 2002). And despite acknowledging that “*Detroit Free Press* said the experience-and-logic test ‘provide[s] a test of general applicability’ for deciding whether the First Amendment protects a right of access to a given piece of information.” App. 7a, quoting *Detroit Free Press*, 303 F.3d at 700.

The Sixth Circuit therefore determined that *Richmond Newspapers* only applied in “judicial and adjudicatory proceedings.” App. 8a. It was in error to do so.

*Houchins* concerned whether the press had a special right of access, which McCaleb does not claim. *Richmond Newspapers* concerns a general right of access, which existed in this case prior to 2018. It is obvious that *Richmond Newspapers* should control.

**CONCLUSION**

This court should clarify that *Richmond Newspapers* provides a general right of access to government information. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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February 13, 2026