



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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VIA FIRST CLASS MAIL

Justice Raymond H. Berry
Town Court
Town of Reading's Town Hall
PO Box 7
Reading Center, New York 14876

Mr. Patrick Gill, Councilman
3876 CR 28
Watkins Glen, New York 14981

Ms. Beverly Stamp, Councilwoman
State Route 14
Rock Stream, New York 14876

Mr. Gary Conklin, Councilman
PO Box 49
Reading Center, New York 14876

Mr. Marvin Switzer
Town Supervisor
PO Box 5
Reading Center, New York 14876

Mr. Robert Everett, Councilman
3016 Lover's Lane
Watkins Glen, New York 14891

Re: Reported Impediments to Public Access
To the Town of Reading's Court Proceedings

Dear Justice Berry, Sirs and Madame:

I write on behalf of the New York Civil Liberties Union to ask that the Town facilitate public access to court proceedings in the Reading Town Court by permitting people who are denied entry to the courtroom due to capacity issues to wait inside the courthouse for their opportunity to observe proceedings rather than outside in the cold. The NYCLU is concerned that the decision to force observers to wait in the cold deters the public from exercising their constitutional and common law right to observe open judicial proceedings. Allowing observers to wait in common areas inside the courthouse is a reasonable accommodation that properly balances the public's right of access with the Town's need to ensure public safety.

Reported Facts

Concerned citizens have reported to us the below facts.

Recently, police in Schuyler County issued approximately 170 civil disobedience citations arising out of protests against the Federal Energy Regulatory Commission's decision to permit the storage of methane in salt mines in the Finger Lakes region of New York (the "Protests"), all of which are returnable to the Town of Reading Court. On December 17, 2014, Justice Berry limited admittance into his courtroom solely to the defendant and one other

“support person.” Despite objections made to the Court about the closed proceedings, no grounds were articulated to justify the closed proceedings.

While we understand that the Court is now maintaining an open courtroom to fill its 49-person capacity, many more than 49 people have attempted to observe court proceedings pertaining to arrests arising out of the Protests since December 17. Schuyler County Sheriff Deputies informed individuals who are denied entry based on capacity limits that they must wait outside of the courthouse until openings become available in the courtroom. Given the extremely cold outdoor temperatures, some people have been forced to abandon their efforts to observe the court proceedings. This new policy is surprising given that, generally, the indoor space next to the courtroom has been traditionally open to the public as a waiting and meeting area.

The Right of Access to Government Proceedings

The First Amendment¹ and New York law² mandate a presumption of open access to courts, which may be overcome only in limited circumstances based on specific findings that closure is necessary. The protection of public access serves fundamental constitutional values. Specifically, the value of openness lies in the fact that people not actually attending trials can have information about the fairness of the hearing process and the accused of an understanding of the adjudication process. And, New York State’s Judiciary Law codifies this presumption of an open court -- with certain exceptions not applicable to the Protest-related citations: “The sittings of every court within this state shall be public, and every citizen may freely attend the same....”³

Given this constitutional, statutory and common law right of access, government actions that unnecessarily burden this right are presumptively invalid. We cannot understand why the Town would have an interest in denying people attempting to exercise their right of access the

¹ See *Press Enterprises II v. Superior Court of Cal.*, 478 U.S. 1, 2 (1986) (“Specific findings are made demonstrating that ... the defendant’s right to a fair trial will be prejudiced by publicity that closure would prevent, and second, reasonable alternatives to closure cannot adequately protect the defendant’s fair trial rights”); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 608-610 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 576-577, 580 (1980) (plurality opinion) (stating that “without the freedom to attend such trials, ... important aspects of freedom of speech and of the press could be eviscerated.”); *New York Civil Liberties Union v. New York City Transit Auth.*, 684 F.3d 286, 297-98 (2d Cir. 2012) (presumption of openness applies to administrative proceedings); *United States v. Haller*, 837 F.2d 84, 86-87 (2d Cir. 1988) (presumption of access applies to other aspects of criminal trials like plea agreements and plea hearings); *Westmoreland v. Columbia Broad. Sys., Inc.*, 752 F.2d 16, 22 (2d Cir. 1984) (the First Amendment guarantees a qualified right of access not only to criminal but also to civil trials and their related proceedings and records).

² See *Matter of Associated Press v. Bell*, 70 N.Y.2d 32, 38-39 (1982) (endorsing the presumption of openness in pre-trial hearings and the two-pronged test articulated in *Press Enterprise II*); *Matter of Westchester Rockland Newspapers v. Leggett*, 48 N.Y.2d 430, 438 (1979) (holding all court proceedings are presumptively open to the public).

³ New York’s Judiciary Law, Section 4 (McKinneys 2015).

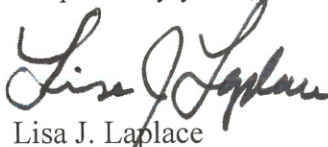
ability to wait in open, public areas of the courthouse and forcing them to wait outdoors where conditions will deter them from exercising their rights.

Conclusion

We respectfully request that you examine the current policies and practices of the Town of Reading to ensure its court proceedings are conducted consistently with the strong guarantee of judicial transparency and permit individuals waiting for the opportunity to observe court proceedings to wait indoors.

If you have any questions, please feel free to contact me at 212.607.3355. Thank you.

Respectfully yours,



Lisa J. Laplace
Staff Attorney