



August 3, 2026

Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: Support for Professor Freeman Engstrom's Suggestion for a New Federal Rule of Civil Procedure Governing the Sealing of Judicial Records

Dear Members of the Advisory Committee on Civil Rules:

We urge the Advisory Committee on Civil Rules (Advisory Committee) to consider Professor Nora Freeman Engstrom and her colleagues' suggestion that the Advisory Committee add a new federal rule to govern the sealing of judicial records. We recognize that this body contemplated this issue last fall but believe it is ripe for reconsideration given recent academic research generated on the topic, including by Professor Freeman Engstrom and her team at the Deborah L. Rhode Center on the Legal Profession.

By way of background, Public Justice is a non-profit legal advocacy organization that fights to preserve access to justice for victims of corporate and governmental misconduct. We have long conducted a special project devoted to ensuring public access to court records and proceedings, which we do primarily by intervening to unseal records in cases of significant public interest. Our work has resulted in the unsealing of evidence relating to deadly product defects, employment discrimination, and constitutional violations in jails and prisons, among others. Over the decades, our experience has been that litigants and judges often conflate legal standards for entering protective orders and sealing court records. Equally troubling is that judges regularly enter sealing orders upon the joint request of the parties, without any consideration for the public's right of access. The latest empirical findings from the Rhode Center team have confirmed our experiential observations about how frequently court documents are improperly sealed.¹

¹ See Nora Freeman Engstrom, David Freeman Engstrom, Jonah B. Gelbach, Austin Peters, Matthew Brundage, Othman Bensouda Koraichi, & Amy Cass, *[Sealed Document]: An Empirical Study of Sealing Orders in the Federal Courts*, 76 DUKE L.J. (forthcoming 2027).



As we wrote in our July 5, 2025 letter of support for a proposed amendment to FRCP 5, the rise in the use of blanket protective orders—increasingly at the strong suggestion of the bench—has led to pervasive, unnecessary sealing. Blanket protective orders frequently expressly permit automatic sealing of information marked as “confidential,” even though most circuits impose a higher standard for sealing court records. Even when blanket protective orders do not contain such clauses, they facilitate improper sealing by muddying the record about whether the appropriate standard has been met, who must meet it, and how. A separate federal rule regarding sealing would add invaluable clarity and help curb “the growing practice of parties agreeing to private discovery and presuming that whatever satisfies the lenient protective-order standard will necessarily satisfy the stringent sealing-order standard”—a practice that has resulted in “a gradual, sub silentio erosion of public access to the judiciary.” *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 417–18, 421 (5th Cir. 2021).

Inconsistent local rules further obscure how and by whom the applicable standard must be met. The districts within California provide an illustrative example. The Central, Eastern, and Northern Districts each provide different procedures for sealing, while the Southern District does not provide a procedure at all. *Compare* C.D. Cal. R. 79-5, *with* E.D. Cal. L.R. 141, *and* N.D. Cal. Civ. R. 79-5, *and* S.D. Cal. Civ. R. 79.2. None of the four sets of local rules identify when parties should use the compelling reasons standard, which is presumed to apply to most judicial records. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1098 (9th Cir. 2016). Of the four, the Northern District’s rule is both the clearest and the only one that informs parties of what they must establish to meet their burden under the “applicable legal standard” for sealing. See N.D. Cal. Civ. R. 79-5(c).

The lack of clarity has led judges to apply the law in conflicting and unpredictable ways. A single judge can—and has—applied different sealing standards to procedurally identical court records. And courts have sealed key records without *any* arguments as to why sealing is proper being made—and with no regard for the public right of access.

We continue to believe that a rule change is necessary to adequately protect the public’s right of access because a straightforward, express, uniform rule is harder to ignore than a patchwork of inconsistently applied standards. An amended rule that acknowledges the existence of different legal standards would remind both litigants and the bench to consider whether sealing is justified, and consistent with the common law and First Amendment rights of public access to court filings. Such a rule need not be lengthy; it must only call to the parties’ attention that a request to seal



documents requires an individualized analysis separate from the good cause analysis under Rule 26(c).

If we can be of further assistance or provide additional information about how sealing conceals important information from the public, please contact Jackie Aranda Osorno (jaosorno@publicjustice.net) or Jacqueline Arkush (jarkush@publicjustice.net).

Sincerely,

A handwritten signature in black ink that reads "Lauren Barnes".

Lauren Barnes
Chief Executive Officer

A handwritten signature in black ink that reads "J. Arkush".

Jacqueline Arkush
Anti-Court Secrecy Fellow