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Affiliations appear only for purposes of identification.

By email

May 27, 2025

Rosemerry Dere
Public Information Officer, San Benito County

Henie Ring
Interim Administrative Officer, San Benito County

Celina Stotler
Integrated Waste Manager, San Benito County

Eric Taylor
Sheriff-Coroner, San Benito County

481 Fourth Street
Hollister, CA 95023

Re: Press access to County sweeps of homeless encampments

Dear Ms. Dere, Ms. Ring, Ms. Stotler, and Sheriff Taylor:

The Reporters Committee for Freedom of the Press and BenitoLink write to raise serious First Amendment concerns with San Benito County's policy and practice of barring reporters from covering County sweeps of homeless encampments located on public property. The County's conduct violates the United States Constitution and California law. The Reporters Committee and BenitoLink urge the County to change course and respect the rights of the press and the public to observe and record government actions moving forward.

As you know, on May 5, 2025, County officials conducted a sweep of a homeless encampment located on public land along the San Benito River, under an overpass. This was a long-planned sweep—the first step in a broader effort that will cost the County more than \$350,000—and BenitoLink naturally sought to cover it live and in person, sending two reporters to observe and photograph the sweep. *See* Noe Magaña, *San Benito County Clears Homeless Encampments Under Fourth Street Bridge*, BenitoLink (May 5, 2025), <https://perma.cc/BZ47-2UAV>. Upon the reporters' arrival, Ms. Dere informed them that they were not permitted to cover the sweep in person and told them to go to a media staging area approximately 100 yards away, fully out of view of activities of the County officials. Fearing punishment for disobeying—given that law enforcement officers were also present on the scene—the reporters left and moved to the sidewalk on an overpass approximately 50 yards away, where their view of

County activities on the riverbank was significantly obstructed—but still better than the view from the area where Ms. Dere had told them to go.

Prior to the sweep, Ms. Dere had told BenitoLink that the County would “strictly prohibit[]” press access to the encampment site on May 5. In response, BenitoLink expressed its commitment to documenting the County’s activities from a safe distance that would not interfere with the operation—as was its First Amendment right. But after BenitoLink attempted to cover the sweep, Ms. Dere sent its editors and reporters another email reiterating that the County “did not want any journalists at the scene of the encampment clean up [on] the first day of the operation,” and suggested that efforts to document future encampment clearings would harm BenitoLink’s ability to speak with County officials and report on County operations. That correspondence reflects a fundamental misunderstanding of the First Amendment right to document government activities, which the Reporters Committee and BenitoLink hope to clarify through this letter.

BenitoLink’s right to document government activities in public spaces, including the County’s sweep of a homeless encampment along the San Benito River, is firmly established. The Constitution protects “the activity of observing a government operation” in contexts as varied as buffalo herding and policing at protests, *Reed v. Lieurance*, 863 F.3d 1196, 1211 (9th Cir. 2017), and the clearing of encampments on public land is no exception, *see Fonseca v. City of Medford*, 2025 WL 988008, at *4 (D. Or. Apr. 2, 2025), *appeal docketed*, No. 25-2618 (9th Cir.) (First Amendment protects “observing and recording police clearing a homeless encampment in a public park,” including where the government would prefer to “relegate[e] reporters and observers to a police designated media staging area”); *Martinez v. City of Fresno*, 2022 WL 1645549, at *11 (E.D. Cal. May 24, 2022) (local ordinance “preventing the public and the press from being able to meaningfully observe defendant’s actions during a sweep” of a homeless encampment likely violated the First Amendment). As numerous courts have explained, “[g]athering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting the ‘free discussion of governmental affairs.’” *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011) (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). And that openness “not only aids in the uncovering of abuses . . . but also may have a salutary effect on the functioning of government more generally.” *Id.* at 82–83.

Those core constitutional values are plainly at stake here. Across the state of California, the management of public land on which homeless individuals live is a subject of legitimate public interest and recurring controversy. *See, e.g.*, Marisa Kendall, *Newsom wants cities to force homeless Californians to move camp every 3 days*, CalMatters (May 12, 2025), <https://perma.cc/GD2D-WXNT>; Robert Handa, *San Jose clears homeless encampments across the city*, NBC Bay Area (Feb. 21, 2025), <http://bit.ly/4mkZsTF>; Max Jordan Nguemini, *Encampment sweeps threaten homeless people’s health*, Stat News (Oct. 11, 2024), <https://perma.cc/TDF9-73K8>. The County’s eviction of such persons implicates sensitive questions of public policy, as well as the constitutional rights of individuals living outdoors. As a result, members of the press and

public routinely seek to document the clearing of encampments to ensure that agency policies are “carried out ‘fairly to all concerned.’” *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 831 (9th Cir. 2020) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980)).

The First Amendment’s safeguards for the press’s constitutional role apply with special force in public fora like the riverbank at issue in this case, which is not only the site of the encampment but also an area frequented by San Benito County residents. See *Index Newspapers LLC*, 977 F.3d at 830; see also *Askins v. U.S. Dep’t of Homeland Security*, 899 F.3d 1035, 1045 (9th Cir. 2018) (describing characteristics of a public forum). When the government blocks access to such a forum, the closure must be “narrowly tailored” to an “overriding interest” and must, in particular, leave open adequate opportunities for the press to document government operations there. *Index Newspapers LLC*, 977 F.3d at 829 (internal quotation omitted). So too under Article I, section 2 of the California Constitution, which “is broader and more protective than the free speech clause of the First Amendment,” but similarly requires that regulations of protected activity must be “(i) narrowly tailored, (ii) serve[] a significant government interest, and (iii) leave[] open ample alternative avenues of communication.” *Los Angeles All. For Survival v. City of Los Angeles*, 22 Cal. 4th 352, 366 (2000).

Courts in California and beyond have resoundingly rejected a generalized interest in safety and privacy—relied on by the County here—as a sufficient justification for imposing a blanket ban on press coverage of newsworthy public events, as the County attempted to do at the May 5 sweep. See *Leigh v. Salazar*, 677 F.3d 892, 900 (9th Cir. 2012) (“[A] court cannot rubber-stamp an access restriction simply because the government says it is necessary. . . . [O]fficials have great incentive to blindfold the watchful eyes of the Fourth Estate.”); cf. *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1995) (holding that government action “that foreclose[s] an entire medium of expression” will virtually always violate the First Amendment). Even in locations much more sensitive than the one at issue here, the U.S. Court of Appeals for Ninth Circuit has held that generic gestures at privacy and safety are “too thin” to justify wholesale restrictions on photographing, for instance, the activities of immigration officers at the border. *Askins*, 899 F.3d at 1045; see also *Index Newspapers LLC*, 977 F.3d at 831 (finding that “dispersing the press” was not “essential to protecting the government’s interests” in “protecting federal property and persons” during demonstrations). And in the specific context of encampment sweeps, federal district courts have likewise found that claims that such sweeps are necessarily “unsanitary and unsafe” or “hectic and traumatic” do not justify foreclosing all observation of the operation when less restrictive alternatives exist. *Martinez*, 2022 WL 1645549, at *8; see also *Fonseca*, 2025 WL 988008, at *7 (same). The same is true here: The sweeping overbreadth of the writ-large suspension of press access to the site on May 5 “suggest[s] that the intention of the [County] is in reality simply to avoid public scrutiny.” *Martinez*, 2022 WL 1645549, at *9.

Given the settled law supporting BenitoLink’s right to document the County’s sweeps of homeless encampments in public spaces, we urge you to respect the right of BenitoLink and other reporters to cover these events in the future, including any ongoing

efforts to clear the riverbank encampment. We recognize and share the interest in avoiding risks to public safety or interference with important government operations, but that interest is not served by banning coverage of public functions on public land. “People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Richmond Newspapers*, 448 U.S. at 572.

Please do not hesitate to contact Lisa Zycherman, Vice President of Legal Programs at the Reporters Committee (lzycherman@rcfp.org), with any questions. We thank you for your time and attention to this important matter of great public interest, and we look forward to hearing from you to work together to resolve this critical issue.

Sincerely,

Reporters Committee
for Freedom of the Press

BenitoLink