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## Second Circuit Affirms First Amendment Right of Access to Juvenile Prosecutions

In *Hartford Courant Co. v. Carroll*,<sup>1</sup> the United States Court of Appeals for the Second Circuit recently affirmed a district court’s decision to grant a motion for a preliminary injunction prohibiting the enforcement of certain provisions of a Connecticut law mandating the automatic sealing of all judicial records and the closure of all court proceedings for criminal prosecutions involving defendants **who were** between 15 and 17 years old at the time of the alleged offense. The Second Circuit concluded that the Connecticut law was not narrowly tailored to achieve a compelling governmental interest and violated the First Amendment right of access to criminal prosecutions of juvenile defendants tried as adults. The decision underscores the emphasis courts place on open access to court proceedings.

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### I. Background

In 2019, Connecticut enacted a statute amending Connecticut General Statute § 46b-127 (the “Juvenile Transfer Act” or “Act”)<sup>2</sup> that mandated the categorical closure of all court proceedings and the automatic sealing of all judicial records in criminal prosecutions of defendants who were between 15 and 17 years old when they were alleged to have committed crimes and were being tried as adults. Pursuant to Connecticut law, all juvenile-delinquency proceedings — actions involving persons under the age of 18 who are accused of committing all but the most serious crimes — are placed on the Family Division’s “juvenile docket” and held in private. The records of all such proceedings are also sealed.<sup>3</sup> The Juvenile Transfer Act mandated that criminal cases involving defendants who were between the ages of 15 and 17 when they allegedly committed certain serious felonies — including murder, felony murder, arson murder, first-degree manslaughter, and aggravated sexual assault — be automatically transferred to the court’s regular criminal docket and tried as adults (“Mandatory Transfer”).<sup>4</sup> In addition, on the recommendation of a prosecutor, the court’s Family Division can transfer actions from the juvenile docket where “the best interests of the child and the public will not be served by maintaining the case in the superior court for juvenile matters” (“Discretionary Transfer,” together with the Mandatory Transfers, the “Transferred Matters”).<sup>5</sup>

The Juvenile Transfer Act, effective October 1, 2019, provided that all proceedings involving Transferred Matters “shall be private” and “conducted in such parts of the courthouse . . . that are separate and apart from the other parts of the court which are then being used for proceedings pertaining to adults charged with crimes.”<sup>6</sup> The

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<sup>1</sup> 986 F.3d 211 (2d Cir. 2021).

<sup>2</sup> Connecticut Public Act No. 19-187.

<sup>3</sup> Conn. Gen. Stat. §§ 46b-121(a)(2)(A), (b)(1), 46b-122, 46b-124.

<sup>4</sup> Conn. Gen. Stat. § 46b-127(a)(1).

<sup>5</sup> Conn. Gen. Stat. § 46b-127(a)(3).

<sup>6</sup> Conn. Gen. Stat. § 46b-127(c)(1)(A).

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Act further required that “[a]ny records of such proceedings shall be confidential in the same manner as records of cases of juvenile matters are confidential . . . unless and until the court or jury renders a verdict or a guilty plea is entered in such case on the regular criminal docket.”<sup>7</sup> Before October 1, 2019, court proceedings and records for cases that would qualify as Transferred Matters were open to the public. These provisions of the Juvenile Transfer Act prohibited members of the press and public from observing court proceedings and reviewing records in Transferred Matters until a verdict or guilty plea was entered.

On December 11, 2019, The Hartford Courant Company, LLC, publisher of *The Hartford Courant* (“*The Courant*”), a widely-circulated newspaper in Connecticut, filed suit in the United States District Court for the District of Connecticut seeking a declaratory judgment that the Juvenile Transfer Act violates the First Amendment to the U.S. Constitution and the Connecticut Constitution, as well as preliminary and permanent injunctive relief enjoining the courts from automatically sealing judicial records and closing proceedings in Transferred Matters. *The Courant* provided examples of Transferred Matters that it could no longer cover because of the Juvenile Transfer Act, including “the highly publicized prosecution of now 59-year-old Michael Skakel for the 1975 murder of Martha Moxley, which occurred when Skakel was 15 years old . . . . Skakel was tried as an adult and convicted of the 1975 murder in 2002. But in 2018, the Connecticut Supreme Court reversed his conviction based on ineffective assistance of counsel. *The Courant* allege[d] that Connecticut is ‘contemplating re-trying Skakel,’ but ‘Skakel’s case has now been sealed pursuant to the Act.’ As a result, if Skakel is retried, neither the public nor the press would be able to attend any criminal proceedings or access judicial records.”<sup>8</sup>

On July 24, 2020, the district court granted *The Courant’s* motion for a preliminary injunction.<sup>9</sup> The district court found that *The Courant* had shown a “clear and substantial likelihood of success on the merits,”<sup>10</sup> because *The Courant* had a First Amendment right to access criminal proceedings,<sup>11</sup> and that the Juvenile Transfer Act was not narrowly tailored to advance a compelling state interest.<sup>12</sup> The district court enjoined the Connecticut courts from sealing the records in Transferred Matters and ordered all Transferred Matters already sealed under the Juvenile Transfer Act to be unsealed.<sup>13</sup>

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## II. The Second Circuit’s Decision

On appeal, the Second Circuit affirmed the district court’s grant of a preliminary injunction enjoining the automatic sealing of all judicial records and the closure of all court proceedings for criminal prosecutions involving defendants who were between 15 and 17 years at the time of the alleged offense. The Second Circuit held that the Juvenile Transfer Act violated the First Amendment right of access to criminal prosecutions of juveniles in criminal court because the Act was not narrowly tailored to serve a compelling government interest.<sup>14</sup>

The Second Circuit began by acknowledging that there is a well-established “qualified ‘First Amendment right to access of criminal trials’”<sup>15</sup> that must be balanced against a defendant’s right to a fair trial or the government’s

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<sup>7</sup> *Id.*

<sup>8</sup> *Hartford Courant Co. v. Carroll*, 474 F. Supp. 3d 483, 491 (D. Conn. 2020) (internal citations omitted).

<sup>9</sup> *Id.* at 507-08.

<sup>10</sup> *Id.* at 505.

<sup>11</sup> *Id.* at 496-500.

<sup>12</sup> *Id.* at 501-06.

<sup>13</sup> *Id.* at 507-08.

<sup>14</sup> *Hartford Courant*, 986 F.3d at 215-16.

<sup>15</sup> *Id.* at 218 (citing *Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 604 (1982)).

interest in preventing the disclosure of sensitive information.<sup>16</sup> However, the presumption of open access to criminal trials is rarely overcome, and only when preventing disclosure is intended to advance a compelling interest and in a narrowly tailored manner.<sup>17</sup>

In rejecting the defendant-appellants' argument that there is no right of access to criminal trials involving juveniles whose cases are transferred from the juvenile docket, the court employed a two-factor test for assessing the First Amendment right to access criminal proceedings: "(1) 'whether the place and process have historically been open to the press and general public,' and (2) 'whether public access plays a significant positive role in the functioning of the particular process in question.'"<sup>18</sup> With respect to the first factor, the Second Circuit concluded that criminal courts are presumptively open to the public — even when the proceedings involve children.<sup>19</sup> While proceedings in juvenile courts may proceed in private there is no authority to support the closure of proceedings in regular criminal court involving juveniles — especially where the Transferred Matters are in criminal court because a judge or the legislature determined that the juvenile in question should be treated like an adult.<sup>20</sup> The court also found that the manner and method by which individuals are prosecuted in criminal court is the same whether the defendant is an adult or juvenile.<sup>21</sup> Regarding the second factor, the Second Circuit determined that "public access plays a positive role in the functioning of criminal proceedings"<sup>22</sup> regardless of the age of the defendant.

Having found that *The Courant* had a qualified First Amendment right of access, the Second Circuit then assessed whether the qualified right of access could be overcome by a finding that the Juvenile Transfer Act advanced a compelling government interest in a narrowly tailored manner.<sup>23</sup> The court presumed the existence of a compelling interest in protecting the confidentiality of court records and proceedings involving juvenile defendants but determined that the Act was not narrowly tailored to serve that interest.<sup>24</sup> The court found that instead of the categorical presumption of confidentiality for all Transferred Matters, the compelling interest of protecting juveniles from the stigma of criminal proceedings could be advanced by determining on a case-by-case basis whether a proceeding should proceed confidentially.<sup>25</sup> The presumption should be of open access for Transferred Matters, not closure, and the presumption should only be overcome "if the court makes findings on the record to the effect that the need for confidentiality outweighs the public's interest in open proceedings."<sup>26</sup>

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<sup>16</sup> *Id.* (citing *Waller v. Georgia*, 467 U.S. 39, 45 (1984)).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 219 (citing *Press-Enter. Co. v. Superior Ct. of Cal.*, 478 U.S. 1, 8 (1986)).

<sup>19</sup> *Id.* (citing *Globe Newspaper*, 457 U.S. at 604 (holding that a Massachusetts law that excluded observers from criminal matters when a minor victim of a sexual offense was testifying infringed on the First Amended right of access)).

<sup>20</sup> *Id.* at 219-21 ("[T]he right of access to court proceedings and records depends on the nature of the proceeding, not on the personal characteristics of the litigant.").

<sup>21</sup> *Id.* at 220.

<sup>22</sup> *Id.* at 221 (citing *Richmond Newspapers, Inc., v. Virginia*, 448 U.S. 555, 595 (1980) (Brennan, J., concurring) ("Secrecy is profoundly inimical to this demonstrative purpose of the trial process. Open trials assure the public that procedural rights are respected, and that justice is afforded equally. Closed trials breed suspicion of prejudice and arbitrariness, which in turn spawns disrespect for law. Public access is essential, therefore, if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice.")).

<sup>23</sup> *Id.* at 221-22.

<sup>24</sup> *Id.* at 221-23.

<sup>25</sup> *Id.* at 222.

<sup>26</sup> *Id.* at 222 (citing *Globe Newspaper*, 457 U.S. at 607-08 ("'[S]afeguarding the physical and psychological well-being of a minor' is a compelling state interest, '[b]ut as compelling as that interest is, it does not justify a mandatory closure rule, for it is clear that the circumstances of the particular case may affect the significance of the interest.'")).

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The Second Circuit highlighted the *Skakel* case as just one example of the Act's overreach, and as evidence that the Act was not narrowly tailored.<sup>32</sup> Moreover, the Second Circuit found that the Juvenile Transfer Act inconsistently protected juveniles from the stigmatization of criminal proceedings — if a juvenile commits a serious felony, his or her name, photograph, and custody status may be publicly disclosed, even if the child is prosecuted on the juvenile docket. Furthermore, the confidentiality protections of the Juvenile Transfer Act did not apply after a verdict (including acquittal) or a guilty plea is entered in a Transferred Matter.<sup>33</sup> The court rejected the argument that the Act was narrowly tailored “because district courts are permitted to order the disclosure of confidential records to any person with a legitimate interest in the case.”<sup>34</sup> Under the Act, the dockets for Transferred Matters are sealed so members of the press and the public have no way of knowing of the existence of those cases, let alone the ability to request access to those cases.<sup>35</sup>

The Second Circuit found that *The Courant* established a substantial likelihood of success in proving that its qualified First Amended right of access was infringed by the overly broad Juvenile Transfer Act, absent injunction it would suffer irreparable harm, and that the balance of equities supported the entry of a preliminary injunction.<sup>36</sup>

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### III. Conclusion

The Second Circuit's decision in *Hartford Courant v. Carroll* reaffirms the presumption of public access to judicial proceedings, even when juvenile defendants are involved. As the Second Circuit recognized, public access to judicial proceedings depends on the nature of the proceedings and states cannot categorically restrict access based on the characteristics of the individuals involved in the proceedings.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Joel Kurtzberg (partner) at 212.701.3120 or [jkurtzberg@cahill.com](mailto:jkurtzberg@cahill.com); John MacGregor (associate) at 210.701.3445 or [jmacgregor@cahill.com](mailto:jmacgregor@cahill.com); or Tobin Raju (associate) at 212.701.3522 or [traju@cahill.com](mailto:traju@cahill.com); or email [publications@cahill.com](mailto:publications@cahill.com).

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<sup>32</sup> *Id.* (“Mr. Skakel was fifty-nine-years old, but under the Act, the records and proceedings in his case are mandatorily sealed because, despite being forty when he was charged, he committed his alleged offense at the age of fifteen. The need to protect the confidentiality of juveniles is not implicated by Mr. Skakel's case, and yet the statute's broad scope reaches him, in a case of great public interest.”).

<sup>33</sup> *Id.* at 223.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 224.