

No. 24-1061

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

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PROJECT VERITAS, ET AL.

*Petitioners,*

v.

NATHAN VASQUEZ, IN HIS OFFICIAL CAPACITY AS  
MULTNOMAH COUNTY DISTRICT ATTORNEY, ET AL.

*Respondents.*

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On Petition for Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit

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**BRIEF OF *AMICI CURIAE* THE CENTER FOR  
MEDICAL PROGRESS AND DAVID DALEIDEN  
IN SUPPORT OF PETITIONERS**

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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

*Amici Curiae* are The Center for Medical Progress, Inc. (“CMP”), a 501(c)(3) non-profit dedicated to investigative journalism on bioethical issues, and David Daleiden, its founder and president. In 2015, CMP and Daleiden released undercover videos exposing illegal fetal tissue trafficking by Planned Parenthood and its partners, prompting congressional investigations, a \$7.8 million settlement against related companies, and nationwide debate regarding practices in the harvesting and sale of aborted fetal body parts at abortion clinics across the country. The investigation also revealed violations of medical standards and ethics at Planned Parenthood Gulf Coast in Texas, which the Fifth Circuit noted was willing to perform illegal partial-birth abortions to sell fetal body parts. *Amici*’s work prompted regulatory reforms and heightened public scrutiny of government-funded research on aborted human fetuses.

Daleiden faced unprecedented criminal prosecution under California Penal Code § 632, a law similar to the one at issue here, for his recordings in public settings. Prosecutors’ narrow construction of the term “public” setting to punish Daleiden for his reporting illustrates the chilling effect that two-party consent laws like Oregon’s ORS § 165.540 have on citizens gathering the news. *Amici* have a direct interest in ensuring that journalists can engage in

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<sup>1</sup> No counsel for any party authored any part of this brief, and no person or entity other than *amicus* funded its preparation or submission. All parties received timely notice of *amicus*’ intent to file this brief

undercover reporting without fear of selective prosecution, and the outcome of this case will shape the First Amendment's protections for newsgathering nationwide.

### SUMMARY OF ARGUMENT

The First Amendment's history and text demand robust protections for newsgathering, including undercover video journalism, as a vital means of exposing truth and informing public discourse. The Framers, reacting to colonial censorship, crafted the First Amendment to reject prior restraints and ensure protections for the press enjoy the broadest possible scope. This Court has consistently upheld these principles, recognizing that newsgathering is integral to press freedom.

Oregon's two-party consent law, ORS § 165.540, unconstitutionally restricts undercover journalism by criminalizing recordings in public settings where there is no reasonable expectation of privacy. *Amici's* experience—facing selective prosecution under a similar California law for exposing fetal tissue trafficking—demonstrates the chilling effect of such statutes. The law's wording risks content-based application and empowers rogue actors to prosecute based on their personal political biases. The Court need look no further than Daleiden's prosecution for the “shocking” content of his undercover videos to see a real-world example of this danger. Certiorari is warranted to clarify that the First Amendment protects undercover recordings of matters of public interest in public places, resolving lower court inconsistencies and safeguarding investigative journalism.

## ARGUMENT

### **I. Oregon’s Two-Party Consent Law Unconstitutionally Restricts Undercover Journalism**

The First Amendment’s guarantee of free press is a cornerstone of democratic accountability, ensuring that journalists can investigate and expose matters of public concern without fear of governmental retribution. Undercover video journalism, such as that pursued by both Appellant Project Veritas and *amici* David Daleiden and the Center for Medical Progress (CMP), plays a vital role in uncovering hidden truths that might otherwise remain concealed.

Oregon’s ORS § 165.540, which prohibits recording conversations without all-party consent, imposes an unconstitutional prior restraint on undercover journalism. *Amici’s* experience under a similar California law illustrates the law’s chilling effect and the urgent need for First Amendment clarity.

#### **A. *Amici’s* Undercover Journalism and Its Impact**

David Daleiden and CMP’s undercover video journalism exposed significant ethical and legal concerns within the abortion industry, sparking widespread public debate and prompting governmental action. From 2013 to 2015, Daleiden and CMP conducted a 30-month investigation, called the “Human Capital Project,” to document the procurement, transfer, and sale of aborted fetal

tissue by major abortion providers. These investigations involved major abortion industry representatives like Planned Parenthood Federation of America (“PPFA”), its affiliates, and related organizations. Using the established journalistic technique of undercover recording, CMP investigators posed as “secret shoppers” for a fictitious tissue procurement company, BioMax Procurement Services, LLC, to engage in conversations with industry leaders at public venues such as trade shows and restaurants.

The resulting videos captured admissions from abortion industry officials, including discussions of per-specimen payments for fetal tissue, altering abortion procedures to obtain intact fetuses, and practices potentially violating federal and state laws, such as partial-birth abortion bans. For example, one Planned Parenthood official described using ultrasound to flip the fetus to a “breech” or feet first position so that “there’s dilation that happens as the case goes on” in order to harvest an “intact calvarium” or fetal head, while another joked about using a “less crunchy technique” to sell more intact fetal specimens because “I want a Lamborghini.” These revelations, published starting July 14, 2015, prompted immediate and significant responses:

- **Congressional Investigations:** The U.S. House of Representatives and Senate launched comprehensive investigations, reviewing tens of thousands of documents and issuing dozens of criminal and regulatory referrals for PPFA and its partners. The House Select Investigative Panel and Senate Judiciary Committee concluded that Planned



Parenthood had committed systemic legal violations, and credited CMP's videos as the catalyst for their inquiries.

- **State Legal Action:** In October 2016, the Orange County District Attorney initiated a civil prosecution against DV Biologics and DaVinci Biosciences for illegally selling fetal tissue obtained from Planned Parenthood, resulting in a \$7.8 million settlement. The Orange County DA credited CMP's journalism for prompting the case.
- **Public Discourse:** CMP's videos ignited a robust public debate on the ethics of fetal tissue procurement, bringing transparency to an otherwise opaque industry and informing citizens about practices affecting public policy and medical ethics.

These outcomes demonstrate the profound public interest served by Daleiden and CMP's journalism. By exposing potential illegalities and ethical lapses, their work fulfilled the First Amendment's core purpose: enabling the press to "bare the secrets" of powerful institutions and inform the public. *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring).

## **B. Political Opponents Retaliate to Censor Speech.**

The prosecution of Daleiden under California Penal Code § 632—the first and only criminal prosecution of a journalist under this statute—illustrates the grave threat posed by vague and

ambiguous recording laws that enable creative prosecutors to weaponize the powers of their offices to circumvent First Amendment protections offered to undercover journalists. Section 632 criminalizes recording “confidential communications” without the consent of all parties, but its application to public settings, as in Daleiden’s case, creates a chilling effect on investigative reporting. Daleiden was prosecuted for capturing conversations in public places, such as crowded restaurants and trade shows, where third parties could overhear. As admitted by the California Attorney General, Daleiden was targeted for prosecution because his recordings were “edited to enhance their shock value” and published online. In short, Daleiden was targeted for prosecution because his political opponents did not like the content of the newsworthy footage he gathered.

California’s selective enforcement of § 632 against politically disfavored speech shows the danger of these types of restrictions on traditional newsgathering activities. In the years surrounding Daleiden’s prosecution, outlets like NBC4 Los Angeles, PETA, and CBS Los Angeles conducted investigations in the State by way of undercover video recordings yet faced no prosecution for their similar recording activity. For instance, NBC4 reporters recorded janitors falsifying safety records in 2008, and PETA investigators recorded animal neglect in 2012, both without consent and in settings where conversations were not necessarily private. Despite this, California took no action. This disparity suggests that Daleiden was targeted for the

controversial nature of his findings, not the act of recording itself.

The prosecution's impact on Daleiden and CMP has been profound. Facing 15 criminal counts over nearly 10 years, a home raid, and years of litigation, Daleiden ultimately entered a no-contest plea agreement to a single count in January 2025 to dismiss the case, agreeing to a one-year diversionary period during which he cannot make recordings violating § 632. Since 2015, CMP has refrained from further undercover recordings in California, uncertain of the law's scope and fearing additional prosecution. This chilling effect not only silences Daleiden and CMP but also deters other journalists from pursuing undercover investigations, particularly on controversial topics, undermining the public's right to know.

Oregon's ORS § 165.540 poses a similar threat, criminalizing recordings in public settings where no reasonable expectation of privacy exists. This chills journalism on controversial topics, as journalists fear prosecution based on the impact of their truthful reporting. *See TikTok Inc. v. Garland*, 145 S. Ct. 57, 67 (2025).

### **C. Need for First Amendment Clarity**

Clear First Amendment protections are essential to ensure that undercover video journalism can continue without the threat of selective prosecution. The Supreme Court has long recognized that “without some protection for seeking out the news,

freedom of the press could be eviscerated.” *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972).

This Court should grant certiorari to clarify that the First Amendment protects undercover video journalism conducted in public places or places of public accommodation where there is no reasonable expectation of privacy. Such clarity is critical for several reasons:

- **Ceasing Content-Based Discrimination:**

The prosecution of Daleiden demonstrates how laws like Oregon’s speech restrictions can be weaponized to target journalists based on the content of their reporting. Clear First Amendment guidance that protects undercover reporting would help ensure that laws are applied neutrally, preventing viewpoint-driven enforcement. *TikTok Inc. v. Garland*, 604 U.S. \_\_\_, 145 S.Ct. 57, 67 (2025) (“Government action that suppresses speech because of its message ‘contravenes [essential First Amendment rights].’”) (quoting *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 641 (1994)).

- **Preserving Investigative Journalism:**

Undercover journalism has a storied history of exposing wrongdoing, from Upton Sinclair’s *The Jungle* to modern exposés on workplace safety and animal welfare. Without constitutional safeguards, some journalists continue to avoid (and other journalists are likely to avoid) such investigations, depriving the public of critical information. *Id.* at 66 (recognizing the First Amendment triggers

review of challenged government actions when they don't directly regulate expressive conduct but "impose a disproportionate burden upon those engaged in protected First Amendment activities.") (quoting *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 703–704 (1986)).

- **Informing Public Discourse:** Daleiden and CMP's work sparked national investigations and informed public policy debates on fetal tissue procurement. Suppressing such journalism limits the marketplace of ideas, undermining the First Amendment's role in fostering informed self-governance. *Consolidated Edison Co. of New York, Inc. v. Public Serv. Comm'n of New York*, 447 U.S. 530 (1980) ("Freedom of speech is indispensable to the discovery and spread of political truth and the best test of truth is the power of thought to get itself accepted in the competition of the market.") (cleaned up).

The First Amendment must protect undercover video journalism like that of *amici*, which exposed critical issues of public concern and prompted significant governmental and societal responses. The chilling effect of speech restrictions in places like California and Oregon threatens the vitality of investigative journalism and the public's right to know. This Court should grant certiorari to provide clear First Amendment protections for recording matters of public interest in public settings, ensuring that journalists can continue to uncover truth without fear of selective prosecution. Such clarity is essential to uphold the press's role as a guardian of

democracy and to prevent the abuse of selective prosecution to silence disfavored voices.

## **II. The First Amendment’s History Demands Broad Protections for Newsgathering.**

The First Amendment’s guarantee of press freedom, rooted in the Framers’ rejection of censorship, requires expansive protections for newsgathering. This Court’s historical analysis, as in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 25 (2022), confirms that constitutional protections must align with their historical scope.

### **A. The Framers’ Intent to Reject Censorship**

“The only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society.” *Bridges v. California*, 314 U.S. 252, 265 (1941). James Madison emphasized that, unlike what they faced with Britain, press freedom must be exempt from both executive and legislative restraints. *Near v. Minnesota*, 283 U.S. 697, 714 (1931) (quoting Report on the Virginia Resolutions, in 4 Madison’s Works 543 (1800)). Thomas Jefferson similarly declared, “our liberty depends on the freedom of the press, and that cannot be limited without being lost.” Letter to James Currie (Jan. 28, 1786), in Papers of Thomas Jefferson, Vol. 9, p. 239 (Julian P. Boyd ed., 1954).

This expansive view underscores that the press’s ability to gather and disseminate information

without fear of suppression is central to its constitutional role. The Framers' negative interaction with the British's attempt to censor them with the Stamp Act of 1765 is just one of the many examples that demonstrate the Framers' intent to ensure that the First Amendment provided broad press protections. *See McConnell v. Federal Election Com'n*, 540 U.S. 93, 252-253 (Scalia, J., concurring), Justice Scalia determined that the founders saw the Act as a "grievous incursions on the freedom of the press."

This Court has repeatedly affirmed the Framers' historical commitment to press freedom. In *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring), Justice Black emphasized that the First Amendment's history and language protect the press's freedom to publish news "whatever the source, without censorship, injunctions, or prior restraints." He added that the press was protected to "bare the secrets of government and inform the people," a function that hinges on unfettered newsgathering. *Id.* This principal traces back to the people's quick and overwhelming rejection of laws like the Sedition Act of 1798, which sought to criminalize publications critical of the government. This Act required that "if any person shall write, print, utter or publish ... any false, scandalous and malicious writing or writings against the government ... [they] shall be punished ... ." *Sedition Act of 1798*, ch. 74, 1 Stat. 596 (expired 1801).

Several individuals were tried under the Sedition Act, and more still moderated their behavior due to it. *New York Times Co. v. Sullivan*, 376 U.S. 254, 298

n 1 (1964) (Goldburg, J., Concurrence, compiling cases). The subsequent political repudiation of the Sedition Act, including Congress's repayment of fines, reflects a national consensus that such restrictions on the press are antithetical to the First Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 276 (1964).

This history underscores the Framers' intent to protect newsgathering as essential to democratic accountability. See *Grosjean v. Am. Press Co.*, 297 U.S. 233, 249 (1936) ("[I]t is evident that the restricted rules of the English law in respect of the freedom of the press in force when the Constitution was adopted were never accepted by the American colonists, and that by the First Amendment it was meant to preclude the national government, and by the Fourteenth Amendment to preclude the states, from adopting any form of previous restraint upon printed publications, or their circulation, including that which had theretofore been effected by these two wellknown and odious methods.").

### **B. Rejection of Prior Restraints**

This Court's jurisprudence establishes that the First Amendment's core protection against prior restraints extends to newsgathering. In *Near v. Minnesota*, the Court struck down a Minnesota statute that allowed injunctions against publications deemed malicious or defamatory, recognizing that such laws impose "effective censorship" by suppressing the press's ability to expose official misconduct. *Near*, 283 U.S. at 712, 716. The statute's requirement that publishers prove the truth of their allegations with "good motives" and "justifiable ends"



placed an intolerable burden on newsgathering, chilling investigative journalism. *Id.* at 711–712. The Court’s holding that the liberty of the press “has meant, principally although not exclusively, immunity from previous restraints or censorship” underscores that newsgathering must be free from preemptive governmental controls. *Id.* at 716–717.

Similarly, in *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971), the Court invalidated an injunction that suppressed the distribution of literature critical of a private individual, emphasizing the “heavy presumption” against the constitutional validity of prior restraints. Directly relevant to the facts in *Project Veritas*, the Court noted that there was no support for the claim that an interest against “invasion of privacy” was sufficient to support a restriction of “public criticism” of “business practices.” *Id.* 420–421. The Court’s reasoning in *Organization for a Better Austin* applies directly to newsgathering: if the press cannot be restrained from disseminating information, it follows that the act of gathering that information must also be protected. Any restriction that impedes the press’s ability to seek out news risks “eviscerat[ing]” the freedom of the press. *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972).

### **C. Newsgathering Must be Protected as Integral to Press Freedom.**

The Court has explicitly recognized that newsgathering enjoys First Amendment protection. This Court has held that “without some protection for seeking out the news, freedom of the press could be eviscerated.” *Branzburg v. Hayes*, 408 U.S. 665, 681

(1972). This principle reflects the reality that the press’s ability to inform the public depends on its capacity to access and investigate information. While the Court in *Houchins v. KQED, Inc.*, 438 U.S. 1, 15 (1978), held that the First Amendment does not mandate access to government-controlled facilities and information, it did not diminish the press’s right to gather news through open and lawful means.

Indeed, the Court has distinguished between impermissible acts, such as breaking and entering to obtain news, *Cohen v. Cowles Media Co.*, 501 U.S. 663, 669 (1991), and the protected activity of newsgathering through direct sources and open channels. Recording in public settings, as Project Veritas and *amici* did, is protected speech, particularly when exposing the truth about matters of public interest. *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1203 (9th Cir. 2018).

Oregon’s ORS § 165.540, like California’s § 632, threatens this right by criminalizing recordings without all-party consent, even in public venues. Such laws risk content-based enforcement, as seen in *amici*’s prosecution, and require this Court’s review to align with the First Amendment’s historical scope. See *United States v. Stevens*, 559 U.S. 460, 473 (2010).

## CONCLUSION

Oregon’s two-party consent law threatens the First Amendment’s guarantee of free press by chilling undercover journalism. *Amici*’s prosecution under a similar California law demonstrates the real-world harm of selective content-based prosecution

under a similar recording statute. This Court should grant certiorari to clarify that the First Amendment protects recording matters of public interest in public settings without the consent of all parties, ensuring journalists can uncover truth without fear of selective prosecution. Failure to act risks eroding the Framers' intention for the press to maintain its role as a democratic guardian.

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