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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-1200

Lower Tribunal Case Nos. 1D14-2163
2012-CA-00412 / 2012-CA-00490 / 2012-CA-2842

PAT BAINTER, *et al.*,
Appellants,

v.

LEAGUE OF WOMEN VOTERS OF FLORIDA, *et al.*,
Appellees.

BRIEF *AMICI CURIAE* OF THE ASSOCIATED PRESS, THE BRADENTON HERALD, THE FIRST AMENDMENT FOUNDATION, THE FLORIDA SOCIETY OF NEWS EDITORS, GANNETT BROADCASTING, GANNETT CO., HALIFAX MEDIA GROUP, MEDIA GENERAL OPERATIONS, MIAMI HERALD MEDIA COMPANY, MORRIS COMMUNICATIONS, ORLANDO SENTINEL COMMUNICATIONS, SCRIPPS MEDIA, AND SUN-SENTINEL COMPANY IN SUPPORT OF APPELLEES

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IDENTITY OF *AMICI CURIAE* AND STATEMENT OF INTEREST

The *amici* are national and state news outlets, a state nonprofit First Amendment and freedom of information advocacy group, and a state professional association for news editors. Specifically, *amici* include: (1) The Associated Press; (2) The Bradenton Herald, Inc.; (3) the First Amendment Foundation; (4) the Florida Society of News Editors; (5) Gannett Broadcasting, Inc. (d/b/a WTLV-TV, WJXX-TV, and WTSP-TV); (6) Gannett Co., Inc. (d/b/a *Florida Today*, *Fort Myers News-Press*, *Pensacola News Journal*, and *Tallahassee Democrat*); (7) Halifax Media Group, LLC (d/b/a *Sarasota Herald-Tribune*, *The Daytona Beach News-Journal*, *The Gainesville Sun*, *Ocala Star Banner*, and *The Ledger*); (8) Media General Operations, Inc. (d/b/a WFLA-TV); (9) Miami Herald Media Company; (10) Morris Communications Corporation (d/b/a *The Florida Times-Union*); (11) Orlando Sentinel Communications, LLC; (12) Scripps Media, Inc. (d/b/a *Naples Daily News*, *Stuart News*, *St. Lucie News-Tribune*, *Jupiter Courier*, *Indian River Press Journal*, *TC Palm*, *Sebastian Sun*, *Vero Beach Newsweekly*, WFTS-TV and WPTV-TV); and (13) Sun-Sentinel Company, LLC.[1]

[1] A complete description for all *amici* is set forth in the *amici's* Motion For Leave to File Amici Curiae Brief and the Motion for Leave of Additional Amici To Join Amici Curiae Brief, respectively filed on July 21 and July 22, 2014. *Amici* herein incorporate by reference such descriptions.

The case underlying this appeal involves a judicial determination of whether, and to what extent, several Florida congressional districts were drawn unconstitutionally. As the trial court stated, "[t]he case before [it] is of the highest importance, going, as it does, to the very foundation of our representative democracy." (Pl. 2d Supp. App. 209.) As advocates for court transparency and watchdogs for the public over judicial and legislative affairs, *amici* have a vested and ongoing interest in this proceeding as it relates to the ability of the public to be fully informed both about the legislative redistricting process and the judicial decision making process.[2]

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[2] *Amici* have a specific interest in reviewing the sealed evidence at issue. They have regularly covered the underlying case and the larger redistricting controversy. *See, e.g.*, Frank Denton, *Why Competitive Elections Matter*, Florida Times-Union, July 26, 2014, *available at* http://members.jacksonville.com/reason/frank-denton/2014-07-26/story/frank-denton-why-competitive-elections-matter; Aaron Deslatte, *Court Compels Redistrict Testimony*, Orlando Sentinel, Dec. 14, 2013, 2013 WLNR 31415717; Matt Dixon, *Speaker Testifies on Redistricting*, Stuart News, May 21, 2014, 2014 WLNR 13601225; Gary Fineout, *Fla. Supreme Court Asked to End Political Brawl*, The Associated Press, May 8, 2013; *Fla. Congressional, Senate Redistricting Maps Pass*, WFLA-TV, Jan. 17, 2012, *available at* http://www.wfla.com/story/20448439/fla-congressional-senate-redistricting-maps-pass; Dara Kam, *Lawyers Argue Against Redrawing Districts*, Daytona Beach News-Journal, July 17, 2014, 2014 WLNR 19569069; Mary Ellen Klas, *E-mails Show Plotting By Lawmakers, GOP on Florida Redistricting*, Bradenton Herald, Feb. 5, 2013, 2013 WLNR 2857228; Mary Ellen Klas, *Republicans Mount Last-Ditch Effort to Keep Out of Public Eye Redistricting Case Documents*, Miami Herald, May 15, 2014, 2014 WLNR 13133444; Brandon Larrabee, *Judge Rules Fla. Districts Are No Good*, Fort Myers News-Press, July

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To this end, *amici* appear herein to address the public's right to access evidence, currently under seal, admitted in the trial court and relied upon by that court in rendering its final judgment.[3] While some have at times viewed the instant litigation through the lens of partisan politicking, *amici* herein eschew any position on the substantive merits of the alleged claims or any related judicial rulings. Rather, *amici* appear only to stress the process transparency the public is due and the high burden imposed on Appellants in seeking the permanent closure of determinative evidence. The citizens of Florida—and citizens throughout the nation—have a right to review and evaluate for themselves all evidence relied upon by the trial court in rendering final judgment on the constitutionality of

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11, 2014, 2014 WLNR 18829457; *Redistricting Appeal Doesn't Look So Appealing*, Sun-Sentinel, July 21, 2014, 2014 WLNR 19888167. To facilitate access, Westlaw NewsRoom, "WLNR," citations are included above, when available.

[3] The "news media shall have standing to challenge any closure order." *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 114 (Fla. 1988). The trial court is bound by this Court's May 27, 2014 per curiam opinion, which required the trial court to admit and maintain the records under seal. *See League of Women Voters of Florida v. Data Targeting, Inc.*, 140 So. 3d 510 (Fla. 2014). Accordingly, any request for access to the trial court would be futile. Though most of the briefing is under seal in this matter, and thus inaccessible to the public, including the *amici*, Appellants' in their supplemental brief have asked this Court to "permanently seal the material already disclosed in the trial court, and in these appellate proceedings…." (NP Supp. Br. 8.), thus placing directly at issue in this appeal the matter addressed herein.

district mapping that impacts all Florida citizens and could ultimately factor in the future makeup and political balance of the U.S. House of Representatives.

BACKGROUND

This background section only highlights events in this litigation relevant to *amici's* above-stated interest. The trial court permitted discovery disclosures of certain records in the possession of non-parties—the herein Appellants—and directed that while the documents could be admitted into evidence under seal, any proceedings concerning the non-parties would be open to the public. (NP Am. App. L.)[4]

On May 22, the First District Court of Appeal issued an order reversing the trial court's May 15 order, along with a related order from May 2, "to the extent the orders permit any degree of disclosure or use at trial of the constitutionally-protected contents of the privileged and confidential documents that are the subject of those orders." (Pl. 2d Supp. App. 75.)[5] Five days later, this Court entered a *per*

[4] *Amici* cannot access the record because most of the appendices have been filed under seal. Accordingly, the *amici* cite to the record, here the trial court's May 15, 2014 Order, to the best of their ability based on the record description contained in Plaintiffs' Supplemental Answer Brief.

[5] An en banc opinion explaining the court's May 22 order eventually followed on June 19. *See Non-Parties, Pat Bainter, Matt Mitchell v. League of Women Voters*

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curiam opinion staying enforcement of the First District Court of Appeal order. *See League of Women Voters of Florida v. Data Targeting, Inc.*, 140 So. 3d 510.

This Court's May 27 opinion permitted the use of relevant, confidential documents at trial, provided that the trial court "maintain the confidentiality of the documents by permitting any disclosure or use only under seal of the court and in a courtroom closed to the public." *Id*. at 514. At trial, the admitted evidence governed by this Court's May 27 opinion totaled 31 pages of the approximately 540 pages of documents ordered to be produced by Appellants. *See* Pl. Supp. Answer Brief.[6]

Ultimately, that evidence figured centrally in the trial court's July 10, 2014 Final Judgment. (Pl. 2d Supp. App. 210, 212.) In its Final Judgment, the trial court stated that the sealed evidence was "highly relevant and not available from other sources" and that it was "very helpful to [the court] in evaluating whether Plaintiffs had proved that first prong of their theory." (Pl. 2d Supp. App. 213.)

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of Florida, No. 1D14-2163, 2014 WL 2770013 (Fla. 1st DCA June 19, 2014) (Pl. 2d. Supp. App. 157.)

[6] The discussion(s) relating to the 31 pages of non-party documents is believed to be evidenced by trial transcripts contained in the record but filed under seal. (Pl. 3d Supp. App. (currently sealed))

This case indeed presents a tragic irony. According to the trial court, a group of non-parties "conspire[d] to manipulate and influence the redistricting process" and "made a mockery of the Legislature's proclaimed transparent and open process of redistricting by doing all of this in the shadow of that process, utilizing the access it gave them to the decision makers, but going to great lengths to conceal from the public their plan and their participation in it." (Pl. 2d Supp. App. 221.) They were successful in their efforts to influence the redistricting process and "might have successfully concealed their scheme and their actions from the public" had it not been for Appellees' "determined efforts to uncover it." (Pl. 2d Supp. App. 221-22.) As a result, two congressional districts, one currently represented by a Republican, the other by a Democrat, have been declared invalid.[7] Ironically, this determination of improper secrecy occurred in a partially secret proceeding, based upon secret evidence, and the public is left fighting for its right to know exactly how its voting rights were secretly manipulated.

SUMMARY OF ARGUMENT

"A trial is a public event, and there is no special prerequisite of the judiciary which enables it to suppress, edit or censor events which transpire in proceedings

[7] *See* Bill Thompson, *District Lines Still Unresolved*, Gainesville Sun, July 17, 2014, 2014 WLNR 19552549.

before it . . . ." *Miami Herald Publ'g Co. v. McIntosh*, 340 So. 2d 904, 908-09 (Fla. 1976). *See also Craig v. Harney*, 331 U.S. 367, 374 (1947) (holding same). It is against this bedrock principle that *amici* argue for disclosure of the evidence sealed at trial that figured prominently in the final disposition of the case.

Florida has a long-standing commitment to openness in judicial proceedings and records. Those access rights are particularly important when they attach to admitted evidence. Appellants in this case simply cannot meet their burden to overcome the presumptive access burdens that arise once confidential discovery becomes evidence. *Amici*, therefore, request this Court unseal the pivotal evidence relied upon by the trial court.

ARGUMENT

I. THIS COURT HAS LONG RECOGNIZED THE PUBLIC'S RIGHT TO ACCESS JUDICIAL PROCEEDINGS AND RECORDS.

Appellants ask this Court to keep evidence secret in perpetuity. Such a request is antithetical to our state's historic commitment to preserving ready access to courtrooms and court records, both in the criminal and civil context, as well as antithetical to the state Declaration of Rights and the federal Bills of Rights. Moreover, Appellants' request goes beyond records merely disclosed in discovery that were never admitted into evidence to request that this Court permanently seal records admitted into evidence that were essential to the disposition of a case

implicating core democratic rights. The First Amendment, the state Constitution, and the common law all counsel against such a far-reaching request.

A. Civil trials and court records are presumptively open.

"*[A]ll* trials, civil and criminal, are public events and there is a strong presumption of public access to these proceedings and their records . . . ." *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d at 114; *see also Sentinel Commc'ns Co. v. Watson*, 615 So. 2d 768 (Fla. 5th DCA 1993) (explaining "strong presumption" in favor of public access to proceedings and records of court proceedings). Thus, Florida has made clear that openness in civil proceedings is just as "essential to the judicial system's credibility in a free society" as previously established access rights applicable to criminal matters. *Barron*, 531 So. 2d at 116. *Barron* emphasizes the reasons why all Florida courts enjoy a presumption of openness. For example, public oversight prevents the abuses inherent in secret tribunals and promotes "conscientiousness in the performance of duty" from all court actors. *See id*. at 117. Moreover, third parties often have an interest in litigation outcomes and therefore should be afforded the right to be fully apprised of the litigation. *See id*. There also is an educative effect promoted by openness that fosters understanding of the law and respect for judicial decisions. *See id; see also Nixon v. Warner Commc'ns*, 435 U.S. 589, 597 (1978) (recognizing common

law right of access to court records); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491-92 (1975) ("[w]ith respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice.").

Barron mandates that the closure burden is always on the party seeking such closure and that closure will only be granted when necessary to prevent one of the specific harms delineated therein, and then in the least restrictive manner and where no reasonable alternative exists. *See Barron*, 531 So. 2d at 118.[8] Subsequent to *Barron*, Florida voters elevated access rights to constitutional magnitude by approving an amendment to the state constitution granting all persons access to public records, including those of the judiciary. *See* Art. 1, § 24(a), Fla. Const. Hence, the right to access court records is of state constitutional import, thereby imparting the strongest possible presumption of access.

While the United States Supreme Court has never had occasion to squarely address the public's *First Amendment* right to access civil trials, this Court, in *Barron*, recognized that the U.S. Supreme Court had signaled that First Amendment access rights applicable to criminal trials apply with equal force to

[8] The *Barron* closure standard was subsequently incorporated into the Florida Rules of Judicial Administration. *See* Fla. R. Jud. Admin. 2.420(c)(9).

civil trials. *See Barron*, 531 So. 2d at 116. "[H]istorically both civil and criminal trials have been presumptively open." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n.17 (1980). Further, "[T]he first and fourteenth amendments clearly give the press and public a right of access to trials themselves, civil as well as criminal." *Id*. at 599 (Stewart, J., concurring)). Moreover, some federal circuits recognize a First Amendment right of access to civil proceedings and records, and no court has ever expressly found that such rights do not exist.

The U.S. Supreme Court firmly established common law access rights to all judicial records in *Nixon*. 435 U.S. at 597. In the wake of its later ruling in *Richmond Newspapers, Inc. v. Virginia* establishing a First Amendment right of public access to criminal trials, lower federal courts have long recognized First Amendment-based access rights in civil matters.[9] This right was extended to

[9] *See, e.g., Gambale v. Deutsche Bank AG*, 377 F.3d 133, 140 (2d Cir. 2004) (finding presumptive common law access rights exist, "and likely a constitutional one as well.") (citing *U.S. v. Amodeo*, 44 F.3d 141, 145-46 (2d Cir. 1995); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988) (finding First Amendment rights apply to documents filed in connection with summary judgment motions); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir. 1984) (finding a First Amendment right applies and that "[p]ublic access to civil trials, no less than criminal trials, plays an important role in the participation and the free discussion of governmental affairs."); *Brown & Williamson Tobacco Corp. v. Fed. Trade Comm'n*, 710 F.2d 1165, 1177-78 (6th Cir. 1983) ("the First Amendment and the common law do limit judicial discretion" to seal court records and "[t]he Supreme Court's [*Richmond Newspapers*] analysis of the justifications

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records as well when, six years later, the U.S. Supreme Court held that the public has a First Amendment access right to preliminary hearings and the transcripts of such hearings. *See Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1 (1986).

The presumption of access, be it based in common law, the state constitution, or the First Amendment, has been held to reach its peak when the particular records at issue are in some manner determinative or central to the controversy. Some courts have spoken even more broadly in terms of the role a document plays in the judicial function and adjudicatory process. *See, e.g., IDT Corp. v. eBay*, 709 F.3d 1220, 1224 (8th Cir. 2013); *U.S. v. Amodeo*, 44 F.3d at 145; *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 13 (1st Cir. 1986). The presumption is, therefore, at its greatest when evidence relating to dispositive judicial decisions is at issue.[10]

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for access to the criminal courtroom apply as well to the civil trial."); *Newman v. Graddick*, 696 F.2d 796, 801-02 (11th Cir. 1983) (holding there was a presumption of access to all stages of civil proceedings relating to the release of convicted prisoners because the public had a great interest in knowing how such decisions were made, and applying a strict scrutiny standard to any proposed closure.).

[10] *See Gambale*, 377 F.3d at 140; *JetBlue Airways Corp. v. Helferich Patent Licensing, LLC*, 960 F. Supp.2d 383, 397 (E.D.N.Y 2013); *Goesel v. Boley Int'l (H.K.) Ltd.*, 738 F.3d 831, 833 (7th Cir. 2013) ("The reason for this right of public access to the judicial record is to enable interested [parties] to know who's using

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The Eleventh Circuit has held, for example, that discovery material filed in connection with pretrial motions requiring a merits-based resolution is subject to a presumption of access. *See Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311 (11th Cir. 2001). *See also Matter of Cont'l Illinois Secs. Litig.*, 732 F.2d 1302, 1308-09 (7th Cir. 1984) (Party's motion to terminate required court to make factual and legal determinations similar to those made on summary judgment). The Fourth Circuit has found a *First Amendment* right of access attaches to records filed with summary judgment motions as they substitute for trial. *See Rushford*, 846 F.2d at 253.[11] Core evidence remains at issue here.

B. Secret evidence is a particularly pernicious affront to access rights.

Against this backdrop, this Court has recognized that access rights attach to previously private documents once filed with a court and utilized in the adjudicatory process. *See Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378,

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the courts, to understand judicial decisions, and to monitor the judiciary's performance of its duties.").

[11] Numerous state courts also hold that evidence central to the disposition of a case lies at the heart of the public's access rights. *See, e.g., Tacoma News, Inc. v. Cayce*, 256 P.3d 1179, 1185 (Wash. 2011); *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 970 A.2d 656, 682 (Conn. 2009); *Associated Press v. State*, 888 A.2d 1236, 1249 (N.H. 2005); *Danco Labs., Ltd. v. Chem. Works of Gedeon Richter, Ltd.*, 711 N.Y.S.2d 419, 424 (N.Y. App. Div. 2000); *Mokhiber v. Davis*, 537 A.2d 1100, 1111-12 (D.C. 1988) (extending such rights to discovery motions).

384 (Fla. 1987) ("once a transcribed deposition is filed with the court . . . it is open to public inspection"). The U.S. Supreme Court has also made clear that there is a significant qualitative difference between the confidentiality of civil discovery subject to a protective order and that same information once admitted into evidence. In *Seattle Times Company v. Rhinehart*, that court acknowledged these rights were not co-extensive when it found that public access "restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984).[12]

But those restraints cannot permeate the adjudicatory process. "Secrecy is fine at the discovery stage, before the material enters the judicial record . . . . But those documents, usually a small subset of all discovery, that influence or underpin the judicial decision are open to public inspection unless they meet the definition of trade secrets or other categories of bona fide long-term confidentiality." *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 545 (7th Cir. 2002) (citing *Rhinehart*). *See also Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 533 (1st Cir. 1993) ("One generalization, however, is safe: the ordinary showing of good cause which is

[12] Again, *amici* recognize this distinction and are, therefore, only seeking access to the 31 pages of discovery that were actually admitted into evidence.

adequate to protect *discovery material* from disclosure cannot alone justify protecting such material after it has been introduced at trial.").

Florida courts have addressed the specific issue of access to court records in the context of whether the public can be prohibited from accessing exhibits introduced at trial. *See Sarasota Herald-Tribune v. State*, 924 So. 2d 8 (Fla. 2d DCA 2005), *rev. den.*, 918 So. 2d 293 (Fla. 2005), *cert. dismissed*, 546 U.S. 1135 (2006). In *Sarasota Herald-Tribune*, the media sought access to various crime scene records introduced into evidence in a murder trial. *See id*. at 10. As the court described it, "[t]he broadest issue in this case is whether the State can rely upon secret evidence to obtain a conviction for a capital offense" as the state was "using its power to pursue the most extreme penalties." *Id*. at 11-12. The court recognized that "[s]ecret evidence is the hallmark of an oppressive regime; it is not a policy generally acceptable in a free society with courts that must be open to the people to assure legitimacy of those courts and the fairness of the proceedings that occur therein." *Id*. at 12.[13]

[13] Ultimately, the *Sarasota Herald-Tribune* Court largely avoided ruling on constitutional issues and applied the *Barron* standard as set forth in the Rules of Judicial Administration (at that time the rule was numbered 2.051). *See id*. It fashioned a less restrictive, case-specific remedy allowing for the inspection of the evidence that on balance the media found acceptable and ultimately *agreed to*. *See*

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While *Sarasota Herald-Tribune* was a capital criminal case, the instant case exhibits a similar level of public import from the civil perspective, going, as it does, "to the very foundation of our representative democracy." (Pl. 2d Supp. App. 209.) Moreover, the records at issue figured centrally in the Final Judgment. They relate to allegations of partisan political motivations, backroom maneuvering, sham public debate and, ultimately, the invalidation of two congressional districts and the validation of several more—all of which directly impact citizens' voting rights. It is indeed hard to imagine many cases wherein the presumption of full public access to civil records would be stronger.

II. APPELLANTS HAVE NOT MET THEIR BURDEN TO JUSTIFY A PERMANENT, POST-TRIAL SEAL ON ADMITTED EVIDENCE.

To overcome this presumptive right of access and justify a permanent sealing of trial evidence, Appellants must meet the stringent requirements of *Barron* and Rule 2.420. The trial court found that Appellants' *discovery* was protected pursuant to Rule 2.420(c)(9)(A)(i), (ii), (iv), (v), and (vi). (NP Am. App. L.) Discovery is over. Appellants cannot rely on the considerations resulting in a

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id. The concurrence, however, went further and stated that First Amendment rights mandated access to the trial exhibits. *See id*. at 17 (Casanueva, J., concurring).

discovery protection order to shield from the public records admitted into evidence at trial.

None of the bases for protecting discovery apply at this post-trail stage. Rule 2.420(c)(9)(A)(i) and (iv) are no longer applicable as they relate to preventing "a serious and imminent threat to the fair, impartial, and orderly administration of justice" and to obtaining "evidence to determine legal issues in a case." *See* Fla. R. Jud. Admin. 2.420(c)(9)(A)(i), (iv). The trial is over, and the 31 pages have been admitted in evidence.

Appellants likewise cannot claim trade secret protection pursuant to Rule 2.420(c)(9)(A)(ii). It is clear from the Final Judgment that the relevant evidence does not qualify as a trade secret. "A trade secret only exists if the secret-holder takes *reasonable efforts* to maintain the secrecy of the information . . . . There is no objectively 'reasonable' method for concealing information about ongoing illegality." *Alderson v. U.S.*, 718 F. Supp.2d, 1186, 1200 (C.D. Cal. 2010). Further, as the U.S. Supreme Court has held, "[t]he maintenance of standards of commercial ethics and the encouragement of invention are the broadly stated policies behind trade secret law." *Kewanee Oil Co. v. Bicroin Corp.*, 416 U.S. 470, 481 (1974). Given the trial court's conclusions about Appellants' subversive

actions designed to thwart a fair and open redistricting process, they cannot now hide their activities from the public behind a purported trade secret.

Moreover, subsection (v), which protects the disclosure of information that would substantially injure *innocent* third parties, is likewise not applicable. *See* Fla. R. Jud. Admin. 2.420(c)(9)(A)(v). The trial court found the non-parties' documents "evidenced a conspiracy to influence and manipulate the Legislature into a violation of its constitutional duty set forth in Article 3, Section 20 of the Florida Constitution." (Pl. 2d Supp. App. 209.) These records were "highly relevant" and "very helpful" to the trial court's inquiry into whether "there was a secretive shadow process of map drawing by the political consultants which found its way into the enacted congressional map," and a central prerequisite to proving those maps were unconstitutionally drawn. (Pl. 2d Supp. App. 211-12.) The Appellants are not mere innocent third parties, and the circumstances under which Appellants seek protection preclude any request for closure under *Barron*. *See, e.g.*, *Post-Newsweek Stations, Florida Inc. v. Doe*, 612 So. 2d 549, 552 (Fla. 1993) (alleged customers of prostitute not entitled to prevent disclosure of their names and addresses under public records laws because right to seek closure under *Barron* is limited by the circumstances in which that right is asserted).

This reasoning also invalidates any justification to uphold a permanent seal under subsection (vi) as the associational privilege is not absolute, and should, like many other privileges, yield where the information sought relates to a compelling, competing interest in revealing or investigating corruption or crime. *See, e.g.*, *Simmons v. State*, 887 So. 2d 1283 (Fla. 2004); *Roviaro v. U.S.*, 353 U.S. 53 (1957). First Amendment-based privileges have yielded when raised in the context of challenging the disclosure of records or openness of proceedings regarding legislative and administrative activity for which the public has a presumptive right of access. *See Doe v. Reed*, 561 U.S. 186 (2010); *Disabato v. South Carolina Ass'n of Sch. Adm'rs*, 746 S.E. 2d 329 (S.C. 2013).[14]

[14] Even assuming Appellants could sustain a privilege in the admitted evidence, this alone would not be enough to justify permanent sealing. In such cases, a court must then balance the heavy presumption of access against the strength of the asserted privilege. *See, e.g.*, *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 124-25 (2d Cir. 2006). Courts have found that the public's right of access to judicial records outweighs a privilege. *See, e.g.*, *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 71-72 (1st Cir. 2011) (privilege based in privacy and protection of political activity found not compelling enough to outweigh access rights); *U.S. v. Hawkins*, No. CR 04-106 MJJ, 2005 WL 3234509, at *2-*3 (N.D. Cal. Jan. 10, 2005) (attorney-client privilege yielded to public access rights); *Picard Chem. Inc. Profit Sharing Plan v. Perrigo Co.*, 951 F. Supp. 679, 691-92 (W.D. Mich. 1196) (attorney-client privilege and work product protections yielded to public access rights). Preserving mere "reputational" harms also does not overcome the public's access rights. *See, e.g.*, *Doe. v. Public Citizen*, 749 F.3d 246, 270-71 (4th Cir. 2014).

Moreover, there exists no right to privacy in matters of public concern, much less matters of the "highest importance" that go "to the very foundation of our representative democracy." (Pl. 2d. Supp. App. 209.) *See, e.g.*, *Cape Publ'ns, Inc. v. Hitchner*, 549 So. 2d 1374, 1378 (Fla. 1989) (no right of privacy in disclosure of confidential child abuse information reported in connection with newspaper article scrutinizing the judicial process); *Florida Star v. B.J.F.*, 491 U.S. 524 (1989) (no right of privacy in publication of rape victim's name in connection with news report about the crime); *Cape Publ'ns, Inc. v. Bridges*, 423 So. 2d 426 (Fla. 5th DCA 1982) (no right of privacy in photograph of alleged kidnap victim wearing only a dish towel as reporting on the incident was a matter of public concern). As this Court has explained:

> The right of privacy does not prohibit the publication of matter which is of legitimate public or general interest. At some point the public interest in obtaining information becomes dominant over the individual's desire for privacy. It has been said that the truth may be spoken, written, or printed about all matters of a public nature, as well as matters of a private nature in which the public has a legitimate interest.

Cason v. Baskin, 20 So. 2d 243, 251 (Fla. 1944). The public has a legitimate interest in the manner in which its political maps are drawn and a constitutional right to a fair and impartial redistricting process. Such interests go to the "very foundation" of representative government, and in such instances, any privacy

rights must give way to the public's right to know. Indeed, in recognition of the limitations of the right of privacy, *Barron* specifically limits the scope of privacy interests warranting protection to matters "not generally inherent in the specific type of proceeding sought to be closed." *Barron*, 531 So. 2d at 118; Rule 2.420(c)(9)(A)(vi). The documents of the non-parties are not only inherent in the proceedings, but also central to those proceedings. Thus, no privacy interest can shield the public from its rights of access in this case. This Court should, therefore, order the immediate unsealing of all sealed evidence presented at trial.

CONCLUSION

"News delayed is news denied." *Miami Herald Publ'g Co.*, 340 So. 2d at 910. The public already has waited too long to know the complete bases for the trial court's Final Judgment on a matter of public interest of the highest degree. For the foregoing reasons, *amici* respectfully request this Court order the immediate unsealing of all evidence submitted under seal in the underlying trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to counsel of record identified on the attached service list on this 31st day of July, 2014.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH FLA. R. APP. P. 9.210

Undersigned counsel hereby certifies that this Comment is typed in 14 point (proportionately spaced) Times New Roman and otherwise meets the requirements of Florida Rule of Appellate Procedure 9.210.

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