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*Affiliations appear only
for purposes of identification.*

By email

October 11, 2021

Mayor Randy Sparacino
City of Medford
411 W 8th Street
Medford, OR 97501

Acting City Attorney Eric Mitton
City of Medford
411 W 8th Street
Medford, OR 97501

Re: City of Medford v April Ehrlich, Case No. 20F16736-37

Dear Mayor Sparacino and Acting City Attorney Mitton:

The undersigned are members of state and local news media, national news organizations and wire services that report on matters in Oregon, and nonprofit groups dedicated to defending the rights of journalists to gather and report the news. We write concerning the arrest and prosecution of April Ehrlich—a reporter for Jefferson Public Radio, an NPR Member station owned and operated by Southern Oregon University—who was arrested in September of 2020 by Medford police officers for trespass, interfering, and resisting arrest in the lawful course of her reporting. The Medford City Attorney’s Office subsequently chose to prosecute Ms. Ehrlich for trespass and resisting arrest. We understand the Municipal Court has set a trial date of March 25, 2022, in her case. We urge Acting City Attorney Mitton to take immediate action to dismiss the charges against Ms. Ehrlich with prejudice and ask that the City of Medford take steps to prevent another incident like this from occurring again.

The [U.S. Press Freedom Tracker](#) reports that 142 journalists were arrested or detained in the United States in 2020. That compares to just nine such arrests the previous year. Of those 142 arrests, Ms. Ehrlich is among only 11 journalists who currently face criminal charges.

We are aware of the extraordinary circumstances the Medford community faced in the early fall of 2020 due to catastrophic wildfires, which included displaced houseless individuals seeking shelter in a public park. In addition, we acknowledge the challenges law enforcement officers face in managing scenes where protesters or those resisting eviction may be present. But the ability of a free and independent press to cover the news without fear of criminal arrest and prosecution is paramount in such situations.

The management of public land on which individuals experiencing homelessness live is the subject of recurring controversy. *See, e.g., Brenna Visser, Bend Camp Cleanup Draws Criticism*, *The Bulletin* (Mar. 11, 2021), <https://perma.cc/MD4X-7RDD>. The City’s eviction of such persons implicates sensitive questions of public policy, as well as constitutional considerations regarding the rights of individuals living outdoors. *See, e.g., Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), *amended and superseded on denial of reh’g en banc*, 920 F.3d 584, 617 (9th Cir. 2019) (holding that the Eighth Amendment prohibits punishing “conduct that is an unavoidable consequence of being homeless”). As a result, members of the press and public routinely seek to document the removal of homeless individuals from public land to ensure that agency policies are “carried out ‘fairly to all concerned.’” *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 831 (9th Cir. 2020) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980)).

That the First Amendment guarantees the right of reporters like Ms. Ehrlich to cover these operations is firmly established in the Ninth Circuit. The Constitution protects “the activity of observing a government operation” in contexts as varied as buffalo herding and protest policing, *Reed v. Lieurance*, 863 F.3d 1196, 1211 (9th Cir. 2017), and its safeguards apply with special force in public fora such as public parks, *see id.*; *Index Newspapers*, 977 F.3d at 830. When the government restricts 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 functions there. *Id.* at 829 (internal quotation omitted).

Medford Police Lieutenant Mike Budreau told local ABC affiliate NewsWatch 12 that Ms. Ehrlich was arrested after she failed to follow police instructions to leave the park. In a later statement to the Committee to Protect Journalists, Lieutenant Budreau said that Ms. Ehrlich “declined to go to the media staging area, [and] she proceeded to enter the park.” But as Ms. Ehrlich’s employer, Jefferson Public Radio reported, “it was not possible to adequately see or hear interactions between officers and campers, or gather audio” at the “media staging area.” *See Journalist April Ehrlich Facing Criminal Charges Over Reporting on Homelessness in Oregon*, Committee to Protect Journalists (Sept. 25, 2020), <https://perma.cc/5LDJ-WNX4>.

Although Lieutenant Budreau’s statements are inconsistent—Ms. Ehrlich could not have both refused to leave the park and “proceed[ed] to enter” it—the law governing press access is clear in either scenario: The City has an affirmative obligation to afford opportunities to document police operations even when access to the land is otherwise restricted. *See Index Newspapers*, 977 F.3d at 831. And a constitutionally adequate opportunity to observe the work entails both sight and sound access for reporters working in different media. *Cf. Cable News Network v. Am. Broadcasting Companies, Inc.*, 518 F. Supp. 3d 1238, 1245 (N.D. Ga. 1981) (emphasizing that access restrictions must recognize that the availability of different media “can add a material dimension to one’s impression of a particular news event”).

The Medford Police Department's new policy on media access emphasizes the importance of providing media access to scenes of law enforcement activity, including access not available to the general public. *See* Lexipol, *Medford Police Department Policy 346* (Apr. 26, 2021) (personnel may allow news media within the outer perimeter of tactical scenes and "closer access" than the general public to crime scenes), <https://perma.cc/447G-N89Z>. Medford's new media access policy does not authorize an arrest based solely on a reporter's refusal to go to a media staging area. Instead, the policy expressly requires an officer who receives a media request for access to refer the matter to a PIO or available supervisor. *Id.* at 346.2.1.

There is no dispute that Medford police and the City Attorney understood Ms. Ehrlich was a working journalist on September 16, 2020, when they arrested and charged her with misdemeanor crimes. Such an arrest and prosecution based on lawful newsgathering activity is a violation of the First Amendment. The City's year-long refusal to dismiss charges against Ms. Ehrlich stands in sharp contrast with the way other prosecutors throughout the United States typically handle cases where police take journalists who are covering controversial events into custody. In almost all such cases, the prosecuting agency declines to proceed with charges. *See, e.g., U.S. Press Freedom Tracker* (fewer than 10% of arrested journalists faced charges in 2020); Kevin Rector, *L.A. City Attorney Won't Charge 179 protesters, journalists arrested in Echo Park*, Los Angeles Times (June 11, 2021), <https://perma.cc/PAB8-LCRE>.

A recent case from Iowa demonstrates that dismissing this prosecution against a working journalist would represent a wise conservation of limited prosecutorial resources. Polk County Attorney John Sarcone refused to dismiss trespass and interfering charges against *Des Moines Register* reporter Andrea Sahouri, who was arrested while covering a racial justice protest in 2020. A jury deliberated less than two hours before acquitting her of both charges. *See, e.g., Ryan J. Foley, Journalist Acquitted in Iowa Case Seen As Attack On Press*, AP (Mar. 10, 2021), <https://apnews.com/article/andrea-sahouri-acquitted-cd95fea66c260ec7990a2ccda06a6ca7>

The City of Medford police arrested public radio reporter April Ehrlich in a public park while she was engaged in constitutionally protected newsgathering on behalf of the broader public. The City Attorney then compounded that injury by criminally charging her for her reporting activity and leaving those charges pending for more than a year. The undersigned urge that the case against Ms. Ehrlich be dismissed with prejudice.

We appreciate your attention to this important issue. Please feel free to contact Bruce Brown, Executive Director of the Reporters Committee's with any questions at bbrown@rcfp.org.

Sincerely,

The Reporters Committee
for Freedom of the Press

ACLU of Oregon
Advance Publications, Inc.
The Associated Press
BuzzFeed, Inc.
California Broadcasters Association
The Center for Investigative Reporting
(d/b/a Reveal)
Clackamas Review/Oregon City News
Committee to Protect Journalists
The E.W. Scripps Company
Eugene Weekly
Freedom of the Press Foundation
Fundamedios Inc.
Gannett Co., Inc.
International Women's Media
Foundation
John Schrag, Executive Editor, Pamplin
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Street Roots
Trammart News & Publishing
Underscore.news
Paul Westhelle, Executive Director,
Jefferson Public Radio
The WNET Group

cc. Councilor Alex Poythress
Ward 1, City of Medford

Councilor Sarah Spansail
Ward 1, City of Medford

Councilor Clay Bearnson
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Councilor Michael Zarosinski
Ward 4, City of Medford

Councilor Eric Stark
Ward 4, City of Medford

