

NPPA files Amicus Brief Supporting Right to Photograph and Record Police in Public

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The NPPA filed an [Amicus Brief](#) today in a federal civil rights lawsuit involving an Austin, Texas man, who says that police violated his constitutional right to photograph and/or film police in a public setting.

In his complaint Antonio Francis Buehler alleged that he was arrested on a number of occasions while recording Austin Police officers performing their official duties in public places. As a result of these incidents Buehler formed the Peaceful Streets Project, a group which routinely videotapes police officers in the city.

Buehler filed suit against the Austin Police Department and several police officers for violations of his civil rights. The defendants in the lawsuit then moved to dismiss the suit, and claimed "qualified immunity," which protects government officials from being the subjects of lawsuits unless they have violated a clearly established constitutional right.

"The NPPA chose to file an amicus brief so early in this case because of the extraordinary and incredulous claim by the Austin Police Department that 'the Fifth Circuit does not recognize photographing/videotaping police officers as a constitutional right,'" said NPPA Advocacy Chair Alicia Calzada.

The brief counters the police department's argument that the "First Amendment right to videotape law enforcement is not a cognizable claim," as being incorrect as a matter of law and also because it frames the issue far too narrowly. Rather, the constitutional right to film police officers while on duty has been well established for decades through numerous constitutional decisions that protect the "coextensive" rights of journalists and members of the public to gather information and to hold government officials accountable for their actions, as the First Circuit Court of Appeals held in the 2011 case of *Glik v. Cunniffe*. In *Glik*, a citizen was arrested after using his cell phone to photograph Boston police officers he believed were using excessive force in effectuating an arrest. After his charges were dismissed, Glik filed a civil action against the Boston Police Department and won because the First Circuit observed that a citizen's right to film police officers on duty is a "basic, vital, and well-established liberty protected by the First Amendment."

Several other cases have affirmed that the right to film police officers while on duty is clear and unambiguous, thus further weakening the Austin Police Department's dubious claim. Most recently, the First Circuit reaffirmed this principle, denying qualified immunity in a case that involved videotaping police during a traffic stop in the case of *Gericke v. Begin*. The court in *Gericke* explained that some constitutional principles are self-evident and do not need to have a case directly on point.

The United States Department of Justice ("DOJ") has also affirmed this right in multiple Statements of Interest, explaining that over eighty years of precedent, going back to the 1931 case of *Near v. Minnesota*, stand for the proposition that "government action intended to prevent the dissemination of

information critical of government officials, including police officers, constitutes an invalid prior restraint on the exercise of First Amendment rights.”

The law is also clear that these constitutional protections apply as much to individuals as they do the institutional press, something the NPPA has consistently noted. “NPPA has always fought to uphold the right to photograph and record in public for everyone,” said NPPA General Counsel Mickey H. Osterreicher. “While the press may not have any greater right of access than the public, they have no less right either and the last thing we want is for the government to be the arbiter of who is entitled to ‘Free Speech’ or ‘Free Press’ First Amendment protection,” he added.

The amicus brief was drafted pro bono by attorneys Robert Corn-Revere, Ronald London, and Alison B. Schary, with the law firm of Davis Wright Tremaine, who have generously supported this and other NPPA efforts to promote and uphold the right to take pictures in public. Corn-Revere, London and Schary were recipients of the 2013 NPPA Kenneth P. McLaughlin Award of Merit for their efforts in support of the First Amendment.

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