No. 13-5335

In The
UNITED STATES COURT OF APPEALS
For the District of Columbia

CAUSE OF ACTION,

Appellant,

v.

FEDERAL TRADE COMMISSION,

Appellee,

BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, FIRST AMENDMENT COALITION, INVESTIGATIVE REPORTING WORKSHOP AT AMERICAN UNIVERSITY, NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION, NATIONAL PUBLIC RADIO, INC., NORTH JERSEY MEDIA GROUP INC., THE SEATTLE TIMES COMPANY, STEPHENS MEDIA LLC, AND THE WASHINGTON POST IN SUPPORT OF REVERSAL ON THE FEE WAIVER ISSUE IN FAVOR OF APPELLANT

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CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), *amici* state as follows:

A. Parties and *Amici*

All parties, intervenors and *amici* appearing in this Court are listed in Brief of Appellant and *amici*'s Notice of Intention to Participate, except for The Seattle Times Company and The Washington Post. Daily Caller News Foundation is also participating as *amicus*.

B. Rulings Under Review

References to the rulings at issue appear in Brief for Appellant.

C. Related Cases

Pursuant to Circuit Rule 28(a)(1)(C), counsel for *amici* state that they are not aware of any related cases pending in this Court, or any Court of Appeals, or any other court within the District of Columbia.

STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the Addendum to the Brief of Appellant.

CORPORATE DISCLOSURE STATEMENTS

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

First Amendment Coalition is a nonprofit organization with no parent company. It issues no stock and does not own any of the party's or *amicus*' stock.

The Investigative Reporting Workshop is a privately funded, nonprofit news organization affiliated with the American University School of Communication in Washington. It issues no stock.

National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock and does not own any of the party's or *amicus*' stock.

National Public Radio, Inc. is a privately supported, not-for-profit membership organization that has no parent company and issues no stock.

North Jersey Media Group Inc. is a privately held company owned solely by Macromedia Incorporated, also a privately held company.

The Seattle Times Company: The McClatchy Company owns 49.5 percent of the voting common stock and 70.6 percent of the nonvoting common stock of The Seattle Times Company.

Stephens Media LLC is a privately owned company with no affiliates or subsidiaries that are publicly owned.

WP Company LLC d/b/a The Washington Post is a wholly owned subsidiary of Nash Holdings LLC. Nash Holdings LLC is privately held and does not have any outstanding securities in the hands of the public.

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GLOSSARY

"COA" means Cause of Action.

"FOIA" means the Freedom of Information Act, 5 U.S.C. 552 et seq.

"FTC" means the Federal Trade Commission.

"OMB" means the Office of Management and Budget.

"OPEN Government Act" means Openness Promotes Effectiveness in our National Government Act.

IDENTITY AND INTERESTS OF *AMICI CURIAE*

Amici curiae are The Reporters Committee for Freedom of the Press, First Amendment Coalition, Investigative Reporting Workshop at American University, National Press Photographers Association, National Public Radio, Inc., North Jersey Media Group Inc., The Seattle Times Company, Stephens Media LLC, and The Washington Post. *Amici* are described in more detail in Appendix A. Pursuant to F.R.A.P. 29(a) this brief is filed with the consent of all parties.[1]

This case centers on a question that strikes at one of the central accountability principles of democratic government: how far government agencies and the courts can go in defining what is "news" and of "public interest," and thus merits disclosure without hefty fees to the requester. As advocates for the media and the media's ability to gather information from the government and disseminate information to the public, *amici* have a strong interest in ensuring that both established and new media outlets can obtain fee waivers for public records. *Amici* also have a strong interest in ensuring that the needs of the public, and not the interests of the government, determine what is "in the public interest," and that even yet-unpublicized issues can be brought to light in service of that interest.

[1] Pursuant to Fed. R. App. P. 29(c)(5), undersigned counsel for *amici* hereby certifies that no party's counsel authored this brief in whole or part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person, other than *amici curiae*, their members, or their counsel, contributed money that was intended to fund preparing or submitting the brief.

If the District Court's denial of Cause of Action's fee waiver requests is allowed to stand, it could make it much more difficult for new media to obtain public records without being forced to pay prohibitively high fees. This case thus has implications beyond the outcome for the parties directly involved, and could make it difficult for the news media to fully report on the workings of government for the benefit of the public.

SUMMARY OF THE ARGUMENT

The Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, was enacted in 1966 to promote government transparency and accountability, and has been modified several times over the past 48 years to better serve those goals. While professional journalists at established media outlets have been the primary conduits for public access to government information since then, the rise of the Internet has allowed less-established media groups and individual journalists to request, analyze and distribute information and enrich public understanding in recent years.

FOIA and its fee waiver provisions are meant to encourage wider public access and more thorough examinations of government activities, two goals that are both threatened by the District Court's interpretation of the news media and public interest fee waiver provisions. By employing an outdated analysis of "news media" and accepting the Federal Trade Commission's ("FTC") framework for analyzing "public interest," the District Court improperly restricted access to government documents and denied Cause of Action ("COA") its fee waiver.

ARGUMENT

I. The District Court applied an outdated test to analyze the "news media" fee waiver provision, which should instead be interpreted broadly to ensure maximum public access to government information.

Congress passed FOIA in 1966 to increase government transparency and "allow[ ] the general public easier access to information about government activities." Michael Russo, *Are Bloggers Representatives of the News Media Under the Freedom of Information Act?*, 40 COLUM. J.L. & SOC. PROBS. 225, 237 (2006). In 1986, Congress added fee waiver provisions to FOIA, a move that created several categories of requesters, each of whom are charged for different services related to producing government records. Representatives of the news media pay only duplication costs and receive 100 pages of documents free. 5 U.S.C. § 552(a)(4). When Congress passed the 1986 amendments to FOIA, the Office of Management and Budget ("OMB") enacted regulations to guide agencies in interpreting the fee waiver provisions. The Freedom of Information Reform Act of 1986, 52 Fed. Reg. at 10,012-20. The OMB regulations were narrow, though, and in 2007, Congress expanded the definition of "representative of the news media" in FOIA's fee waiver provision.

FOIA was intended to provide broad access to government records, and its fee waiver provisions were mechanisms to further that goal. *See* Russo, 40 COLUM. J.L. & SOC. PROBS. at 228. Despite the best efforts of Congress to

emphasize how important it is to broadly define "representative of the news media" for the purposes of a FOIA fee waiver, courts and government agencies have continued to apply inappropriately narrow definitions. This Court should ensure that the standard applied aligns with what Congress intended and what best serves FOIA's goals of government transparency and accountability.

A. The purpose of FOIA generally is to promote government transparency and accountability.

The Freedom of Information Act was signed into law in 1966 to protect "one of our most essential principles: [. . .] No one should be able to pull curtains of secrecy around the decisions which can be revealed without injury to the public interest." Statement by the President upon Signing S.1160, Office of the White House Press Secretary (July 4, 1966). Since FOIA became law, the federal courts have repeatedly made clear that it is to be interpreted broadly and always with the goal of disclosure. *See, e.g.*, *Environmental Protection Agency v. Mink*, 410 U.S. 73, 80 (1973) (noting that "[w]ithout question, the Act is broadly conceived. It seeks to permit access to official information long shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from possibly unwilling official hands.").

B. FOIA fee waiver provisions specifically were enacted to promote even broader dissemination of government information.

The inclusion of news media and public interest fee waivers in FOIA were meant to "subsidize[ ] those requests most likely to inform the public." Russo, 40 COLUM. J.L. & SOC. PROBS. at 228. In fact, when the first tiered fee structure was introduced into FOIA, Senator Patrick Leahy indicated that he was introducing the Freedom of Information Reform Act in part to "relieve the news media of the need to pay a high cost for access to Government records." 132 Cong. Rec. S14,033 (daily ed. Sept. 27, 1986) (statement of Sen. Leahy); The Freedom of Information Reform Act of 1986, 52 Fed. Reg. at 10,012-20.

Unfortunately, the news media fee waiver provision has not been applied in a manner consistent with Congress's intent in implementing it, and has excluded even members of the traditional media. A recent records request by Shawn Musgrave, an editor at MuckRock,[2] revealed that the Air Force includes more than 27 traditional media outlets and individual journalists representing them on its "commercial requester" list (i.e. on the list of entities that do not qualify for news media fee waivers). Shawn Musgrave, *FOI Request: Air Force Commercial*

[2] "MuckRock is a collaborative news site that brings together journalists, researchers, activists, and regular citizens to request, analyze and share government documents [. . .] The site provides a repository of hundreds of thousands of pages of original government materials, information on how to file requests, and tools to make the requesting process easier. In addition, MuckRock staff and outside contributors do original reporting and analysis of many of the documents received through the site." https://www.muckrock.com/about/

Requester List, MUCKROCK (March 25, 2014), available at http://bit.ly/OixxDn. Included on that list of so-called commercial requesters were the Associated Press, The New York Times, The Wall Street Journal, Forbes Magazine, and all three network news outlets. *Id.* Surely classifying entities like these as commercial requesters runs afoul of the intent of FOIA and its fee waiver provisions. Musgrave revealed similar problems at the Navy, which seems to require that to qualify for a news media waiver, an outlet must show it disseminates news and "a product is available for purchase or subscription by the general public." Shawn Musgrave, *Navy: If You Don't Charge, You're Not 'News Media,'* MUCKROCK (July 26, 2013), available at http://bit.ly/1hxn5ir. "By this standard, reporters from online-only, no-paywall publications such as The Huffington Post or ProPublica need [not] even ask for media requesters [status]. Someone should alert the Pulitzer committee, which has awarded journalism's top honor to both sites, in turn." *Id.* Similarly, the Coast Guard has denied news media fee waivers to outlets like *High Country News*, an environmental magazine with 25,000 paid subscribers, on the theory that its circulation was too small. David Cay Johnson, "Muzzling the Freedom of Information Act," NEWSWEEK (Nov. 20, 2013), available at http://bit.ly/1lLnfdL. Even the Department of Justice has not updated its FOIA fee

guidelines since crucial amendments were enacted in 2007 to expand the definition of "representative of the news media." 28 C.F.R. § 16.11.[3]

Practices like the classifications these agencies put forth indicate a real need for courts to carefully assess agency decisions in these areas, and to do so without reference to any internal agency regulations. FOIA cannot accomplish its goal of getting behind the "curtains of secrecy" if the public's representatives are deprived of affordable access to government records.[4] While *amici* are, of course, very concerned at their own exclusion from some news media requester lists, they also recognize the broader implications of such a limited reading of FOIA fee waiver provisions, and believe that the law requires a less restrictive stance.

C. Websites are now the second-most used source of news for Americans, so the goals of FOIA need to be applied in the context of the changing media landscape.

Americans are increasingly turning to online sources for news coverage and analysis. In 1996, 68 percent of Americans said they watched television news while 56 percent reported getting news from newspapers, and 54 percent from

[3] The Occupation Safety and Health Administration, the Department of Homeland Security, the Central Intelligence Agency, the Federal Emergency Management Agency, and the Office of Government Ethics are among the other agencies that also have not adjusted their fee regulations since the 2007 amendments to FOIA. *See* Matthew L. Schafer, *Toll Gates to Public Information: Establishing a Broad Interpretation of the FOIA's News Media Fee Waiver Provision*, 21 (Jan. 16, 2014), available at SSRN: http://bit.ly/1nm6eFz (citing 29 C.F.R. § 70.38, 6 C.F.R. § 5.11, 32 C.F.R. § 1900.02, 5 C.F.R. § 2604.103, and 44 C.F.R. § 5.42).

[4] Statement by the President upon Signing S.1160, *surpa*.

radio. THE PEW RESEARCH CENTER FOR PEOPLE AND THE PRESS, *Trends in News Consumption: 1991-2012*, 1 (Sept. 27, 2012). In 2004, when Pew started measuring online news consumption, 24 percent of people reported getting news online, with the percentages dropping significantly in every other category to 43 percent for newspapers, 59 percent for television and 39 percent for radio. *Id.* By 2012, online news consumption had overtaken all but television, with 39 percent of Americans reporting they regularly got news online, compared with 55 percent who watched television news, 33 percent who listened to news on the radio, and 29 percent who read newspapers. *Id.*

Included in those numbers of online news consumers are, of course, those people who access traditional media through the Internet. But more importantly for the purposes of determining who qualifies for "news media" status, significant percentages of Americans also reported regularly getting their news from social media sites (19 percent), political blogs (12 percent), and email newsletters (13 percent). *Id.* at 6, 14, 18. Perhaps most significantly, many of the sites consumers identified as their sources of news online are blogs or other sites that would not fit a traditional definition of "news media." It is critical that court interpretations of FOIA reflect where such significant segments of the population are getting their information.

D. The District Court's criteria for determining who qualifies as "news media" are outdated in light of the plain language of FOIA, the congressional intent behind the statute, and technological realities.

Congress has twice amended its fee provisions to reflect concerns with how agencies and the courts have interpreted the waiver options and to expand access to government material. Federal agencies, however, have not adapted to those changes. Keeping the goals of greater public access in mind, and respecting the intent behind amendments to FOIA, this Court should reject the District Court's analysis of whether COA qualifies for "representative of the news media" status.

1. The current language of the news media fee waiver provisions supercedes the test upon which the District Court relied.

The first move Congress made toward recognizing the importance of access for news media requesters was to carve out a specific fee exemption for members of the media. The Freedom of Information Reform Act allowed the government to charge representatives of the news media only for reasonable duplication fees and not for search or review time. The Freedom of Information Reform Act of 1986, 52 Fed. Reg. at 10,012-20. Congressional sponsors of the Act supported a broad definition of "news media." *See, e.g.*, 132 Cong. Rec. S14,033 (daily ed. Sept. 27, 1986) (statement of Sen. Leahy).

Even in the face of this clear statutory directive, OMB instead established a requirement that the requester work "for an entity that is organized and operated to

publish or broadcast news to the public." The Freedom of Information Reform Act of 1986, 52 Fed. Reg. at 10,012-20.

The Openness Promotes Effectiveness in our National Government Act ("OPEN Government Act"), which became law at the end of 2007, specifically did away with any "for an entity" requirement in the definition of "representative of the news media" and specified that:

> In this clause, the term "a representative of the news media" means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience [. . .] Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities.

5 U.S.C. § 552(a)(4)(A)(ii). The language of the FOIA statute as it now stands makes clear that "news media" is to be defined broadly and flexibly enough to accommodate a wide range of journalists and new outlets. However, neither OMB nor the District Court adjusted its definitions or analysis to comport with the 2007 amendments to FOIA.

2. Even if the new statutory language of FOIA leaves some ambiguity in the definition of "news media," the drafters clearly intended an expansive interpretation.

FOIA does not specifically define "news media," a wise choice in light of the constantly evolving nature of the media world, but sponsors of the two most recent changes to the fee structure have made clear they intended a broad

interpretation of the phrase. Senator Patrick Leahy indicated in 1986 that he was introducing the Freedom of Information Reform Act in part to "relieve the news media of the need to pay a high cost for access to Government records." 132 Cong. Rec. S14,033 (daily ed. Sept. 27, 1986) (statement of Sen. Leahy); The Freedom of Information Reform Act of 1986, 52 Fed. Reg. at 10,012-20. Representative Glenn English explained that the law favored "those in the information dissemination business because the use of the FOIA for public dissemination of information in government files is in the public interest." 132 Cong. Rec. H9,464 (daily ed. Oct. 8, 1986) (statement of Rep. English). And Rep. English agreed with Sen. Leahy when the senator said, "As new technologies expand, there are new methods of communications which disseminate information to people through media other than traditional print or broadcast media, and these entities should be considered as 'representatives of the news media.' " 132 Cong. Rec. S27,190 (daily ed. Sept. 30, 1986) (statement of Sen. Leahy); 132 Cong. Rec. H9,464 (daily ed. Oct. 8, 1986) (statement of Rep. English) (indicating Leahy's statement "reflect[s] the intent of the Congress in making these changes to the FOIA.").

The OMB, which was tasked with defining "representative of the news media," adopted a definition that required the requester to be reporting "for an

entity." The Freedom of Information Reform Act of 1986, 52 Fed. Reg. at 10,012-20.

In 2007, Congress addressed this issue by adopting another set of revisions to FOIA. The FOIA Amendments were first introduced in the House of Representatives that year by Representative William Clay, who said his amendment was intended to expand the news media fee waiver provision to make clear the government should not deny a fee waiver "solely on the basis of the absence of institutional associations of the requester, but shall consider the prior publication history of the requester," including online publications. H.R. 1309, 110th Cong. (1st Sess. 2007). Senator Leahy and Senator John Cornyn followed Representative Clay's introduction of the FOIA Amendments with the OPEN Government Act, which Senator Leahy said was meant to "protect the public's right to know, by ensuring that anyone who gathers information to inform the public, including freelance journalists and bloggers, may seek a fee waiver when they request information under FOIA." 153 Cong. Rec. 15,831 (Dec. 18, 2007) (statement of Sen. Leahy).

Rather than apply the news media fee waiver as Congress intended, though, agencies and the courts have continued to use the old "for-an-entity" analysis to determine news media status.

> This status quo is interesting for one main reason: it illustrates a sort of ex post facto legislative process executed by the non-legislative

> branches of the government that have erased in practice the progress of legislative reforms in theory.

Matthew L. Schafer, *Toll Gates to Public Information: Establishing a Broad Interpretation of the FOIA's News Media Fee Waiver Provision*, 26 (Jan. 16, 2014), available at SSRN: http://bit.ly/1nm6eFz. The District Court in this case fell victim to the same error.

3. Evolving technology makes determining likely public impact based merely on where a requester intends to publish or previous publication or page view records an unreliable and unworkable standard.

The District Court here found that COA did not qualify as a "representative of the news media," holding COA does not "turn raw materials into a distinct work" or "distribute[ ] that work to an audience." However, the District Court held that COA did meet the first requirement for news media status: it "gathers information of potential interest to a segment of the public."

In holding that COA does not use varied materials to create a distinct work, the District Court pointed only to previous publication history, and there only in a general way. According to the District Court, posts on an organization's own website and related social media pages (such as Facebook and Twitter), along with an email newsletter, are not sufficient to demonstrate publication history on a topic. *Cause of Action v. Fed. Trade Comm'n*, 961 F.Supp.2d 142, 162 (2013). Given that 19 percent of Americans report getting their news from social media

sites, 12 percent report getting news from political blogs, and 13 percent report getting news from email newsletters, the District Court discounted a huge potential audience in dismissing the way COA chooses to communicate with its readers.[5]

On the third "representative of the news media" prong, the District Court was focused on distinguishing between "disseminat[ing] the requested information to the public rather than merely mak[ing] it available." *Cause of Action*, 961 F.Supp.2d at 136. But this is untenable; it is a distinction without a difference.

> The active/passive distinction is indeterminate at best, even when applied to conventional media, and when used as a framework for electronic publication, it leads to results that are essentially accidental and provides no real guidance for determining whether disclosure is in the public interest.

Russo, 40 COLUM. J.L. & SOC. PROBS. at 249. Not only is the District Court's analysis troubling because of the arbitrary outcomes it would produce, but it would also exclude sites that are undeniably representatives of the news media from obtaining the fee waiver they are entitled to. Under this test, even *The New York Times* or *The Washington Post* when publishing something only on their websites would not qualify as news media.

The District Court more specifically faulted COA for not estimating how many people view its website and social media sites, such as Facebook and Twitter. That requirement is arbitrary – it is not clear how many page views would

[5] PEW RESEARCH CENTER, *Trends in News Consumption*, 6, 14, 18.

satisfy the District Court in this case – but more importantly, it runs contrary to the specific language of FOIA, which requires a requester to show only that it "distributes [a] work to *an* audience." 5 U.S.C. 552(a)(4)(A)(ii) (emphasis added). FOIA imposes no minimum audience requirement on news media requesters, and in fact, to do so would frustrate the waiver provision's purpose. Requiring a certain number of consumers before an entity qualifies for news media requester status would unfairly burden fledgling media outlets, solo bloggers, freelance journalists, and media outlets that serve smaller or less populous geographic areas. That outcome contradicts Congress's mandate to "ensur[e] that anyone who gathers information to inform the public, including freelance journalist and bloggers, may seek a fee waiver when they request information under FOIA." 153 Cong. Rec. 15,831 (Dec. 18, 2007) (statement of Sen. Leahy).

II. The District Court improperly deferred to the agency's interpretation of "public interest," despite being charged with responsibility for a *de novo* review of the record.

In analyzing agency determinations under FOIA, including decisions on whether or not to grant a fee waiver, courts are supposed to conduct a *de novo* review. 5 U.S.C. § 552(a)(4)(A)(vii); *see also* 5 U.S.C. § 552(a)(4)(B). The District Court has at least once suggested that agencies are entitled to deference in determinations of requester status, since those decisions typically only involve fee reductions (for news media entities or public interest requesters) and not a full

waiver. *See, e.g., Judicial Watch, Inc. v. Dept. of Justice*, 122 F.Supp.2d 5, (D.D.C. 2000). "However, the broad language of the review provision – which speaks of any action 'under this section,' as opposed to simply a subset of actions under § 552(a)(4)(A)[ ] – argues against this interpretation." Russo, 40 COLUM. J.L. & SOC. PROBS. 225, fn. 91. Agency decisions as to fee waivers are not entitled to deference. *See Al-Fayed v. C.I.A.*, 254 F.3d 300, 307 (D.C. Cir. 2001) (holding that "because FOIA's terms apply government-wide, we generally decline to accord deference to agency interpretations of the statute, as we would otherwise do under Chevron.").

The District Court correctly recognized that it was to do a *de novo* review of the agency's decision on whether COA qualified for a public interest fee waiver. *Cause of Action*, 961 F.Supp.2d at 153. Having made that determination, though, the District Court proceeded to apply the agency's own test for evaluating public interest status: "The FTC has promulgated a regulation setting out four requirements a party making a FOIA request must meet to satisfy this standard. 16 C.F.R. § 4.8(e)(2)." *Id.* at 154. The District Court then walked through an analysis of whether COA met the four-part test set forth in the FTC regulation. Even the cases the District Court cites in support of the four-part analysis rely not on a judge's own true *de novo* interpretation of the fee waiver provisions, but rather on agency regulations at the Department of Justice, Department of Treasury, and the

Internal Revenue Service. *See Judicial Watch, Inc. v. Dept. of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004) and *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003). The application of agency regulations was erroneous in the context of a *de novo* review. Russo, 40 CLMJLSP at 243. The District Court should instead have examined the denial in the context of the statutory language, not the agency's regulations. *See, e.g.*, *Doe v. U.S.*, 821 F.2d 694, 698 (D.C. Cir. 1987) (recognizing that under de novo review, a court may go beyond the administrative record to "pursue whatever further inquiry it finds necessary," and approving a district court decision to look to the language of the Privacy Act statute to determine whether an agency acted appropriately).

If this Court determines COA is not entitled to a news media fee waiver, it should remand to the District Court for renewed consideration of the public interest fee waiver without the application of agency regulations to the discussion.

CONCLUSION

For the reasons stated above, this Court should reverse the District Court's August 19, 2013, order granting summary judgment to the FTC and find that the District Court applied the wrong standards to determine whether or not COA qualified for fee waivers under FOIA.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Bruce D. Brown, do hereby certify: (1) Brief of *Amici Curiae* complies with the type-volume limitation Fed. R. App. P. 32(a)(7)(B) because it contains 4,117 words, according to the word count of Microsoft Office Word 2010; (2) Brief of *Amici Curiae* complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14-point Times New Roman; and (3) Brief of *Amici Curiae* has been scanned for viruses and is virus free.

/s/ Bruce D. Brown

APPENDIX A

Descriptions of *amici*:

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

The Investigative Reporting Workshop, a project of the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

The National Press Photographers Association ("NPPA") is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA's approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

National Public Radio, Inc. is an award-winning producer and distributor of noncommercial news programming. A privately supported, not-for-profit membership organization, NPR serves a growing audience of more than 26 million listeners each week by providing news programming to 285 member stations that are independently operated, noncommercial public radio stations. In addition, NPR provides original online content and audio streaming of its news programming. NPR.org offers hourly newscasts, special features and 10 years of archived audio and information.

North Jersey Media Group Inc. ("NJMG") is an independent, family-owned printing and publishing company, parent of two daily newspapers serving the residents of northern New Jersey: The Record (Bergen County), the state's

second-largest newspaper, and the Herald News (Passaic County). NJMG also publishes more than 40 community newspapers serving towns across five counties and a family of glossy magazines, including (201) Magazine, Bergen County's premiere magazine. All of the newspapers contribute breaking news, features, columns and local information to NorthJersey.com. The company also owns and publishes Bergen.com showcasing the people, places and events of Bergen County.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper The Seattle Times, together with The Issaquah Press, Yakima Herald-Republic, Walla Walla Union-Bulletin, Sammamish Review and Newcastle-News, all in Washington state.

Stephens Media LLC is a nationwide newspaper publisher with operations from North Carolina to Hawaii. Its largest newspaper is the Las Vegas Review-Journal.

WP Company LLC (d/b/a The Washington Post) publishes one of the nation's most prominent daily newspapers, as well as a website, www.washingtonpost.com, that is read by an average of more than 20 million unique visitors per month.

CERTIFICATE OF SERVICE

I, Bruce D. Brown, do hereby certify that I have filed the foregoing Brief of *Amici Curiae* electronically with the Court's CM/ECF system with a resulting service to all counsel of record on May 12, 2014.

/s/ Bruce D. Brown