

# No. 20-3253(L)

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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**RICHARD BEHAR,**

*Plaintiff-Appellee,*

v.

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY,**

*Defendant-Appellant.*

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Appeal from an Order by the United States District Court  
for the Southern District of New York

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**BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS AND 30 MEDIA ORGANIZATIONS IN  
SUPPORT OF PLAINTIFF-APPELLEE'S PETITION FOR REHEARING  
OR REHEARING EN BANC**

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## **CORPORATE DISCLOSURE STATEMENT**

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

Association of Alternative Newsmedia has no parent corporation and does not issue any stock.

The Atlantic Monthly Group LLC is a privately-held media company, owned by Emerson Collective and Atlantic Media, Inc. No publicly held corporation owns 10% or more of its stock.

BuzzFeed Inc. is a privately owned company, and National Broadcasting Company (NBC) owns 10% or more of its stock.

Californians Aware is a nonprofit organization with no parent corporation and no stock.

The Center for Investigative Reporting (d/b/a Reveal) is a California non-profit public benefit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It has no statutory members and no stock.

The Committee to Protect Journalists is a nonprofit organization with no parent corporation and no stock.

The Daily Beast Company LLC is a wholly-owned indirect subsidiary of IAC/InterActiveCorp, a publicly traded company.

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.

First Look Institute, Inc. is a non-profit non-stock corporation organized under the laws of Delaware. No publicly-held corporation holds an interest of 10% or more in First Look Institute, Inc.

Forbes Media LLC is a privately owned company and no publicly held corporation owns 10% or more of its stock.

Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. BlackRock, Inc. and the Vanguard Group, Inc. each own 10% or more of the stock of Gannett Co., Inc.

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

Los Angeles Times Communications LLC is wholly owned by NantMedia Holdings, LLC.

The Media Institute is a 501(c)(3) non-stock corporation with no parent corporation.

The National Freedom of Information Coalition is a nonprofit organization that has not issued any shares or debt securities to the public, and has no parent

companies, subsidiaries, or affiliates that have issued any shares or debt securities to the public.

The National Press Club is a not-for-profit corporation that has no parent company and issues no stock.

The National Press Club Journalism Institute is a not-for-profit corporation that has no parent company and 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.

NBCUniversal Media, LLC's common equity interests are 100% owned by Comcast Corporation and its consolidated subsidiaries.

News Media Alliance is a nonprofit, non-stock corporation organized under the laws of the commonwealth of Virginia. It has no parent company.

The News Leaders Association has no parent corporation and does not issue any stock.

The New York Times Company is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company owns 10% or more of its stock.

Online News Association is a not-for-profit organization. It has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

POLITICO LLC's parent corporation is Capitol News Company. No publicly held corporation owns 10% or more of POLITICO LLC's stock.

Pro Publica, Inc. ("ProPublica") is a Delaware nonprofit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It has no statutory members and no stock.

Radio Television Digital News Association is a nonprofit organization that has no parent company and issues no stock.

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

The Society of Environmental Journalists is a 501(c)(3) non-profit educational organization. It has no parent corporation and issues no stock.

Society of Professional Journalists is a non-stock corporation with no parent company.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

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## INTEREST OF AMICI CURIAE

Amici curiae are the Reporters Committee for Freedom of the Press (the “Reporters Committee”) and 30 newsmedia organizations (together, “amici”).<sup>12</sup>

Amici have filed an accompanying motion seeking leave of Court to file this amici brief.

Lead amicus the Reporters Committee is an unincorporated nonprofit association founded by journalists and media lawyers in 1970, when the nation’s press faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

Journalists frequently use the Freedom of Information Act (“FOIA” or the “Act”), 5 U.S.C. § 552, to gather news and inform the public. Accordingly, as representatives of the news media, amici have a strong interest in ensuring that FOIA’s provisions are interpreted, as intended, to provide the press and public access to information about the work of the government. Amici write to urge

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<sup>1</sup> Pursuant to Fed. R. App. P. 29(a)(4)(E) and Local Rule 29.1(b), amici declare that no party’s counsel authored any part of this brief, and no person other than amici or their counsel contributed money intended to fund the brief’s preparation or submission.

<sup>2</sup> A full list of amici is set forth in Appendix A.

rehearing of the Panel decision in this matter, which takes an incorrectly narrow view of what constitutes an “agency record” under the Act.

### **SUMMARY OF ARGUMENT**

In enacting the Freedom of Information Act, 5 U.S.C. § 552, Congress sought to operationalize a “general philosophy of full agency disclosure” that would help ensure an informed public, central to the functioning of a democratic society. S. Rep. No. 89-813, at 3 (1965), *as reprinted in* Freedom of Information Act Source Book (“Source Book”), S. Doc. No. 93-82, at 38 (Comm. Print 1974). FOIA thus was designed to “open agency action to the light of public scrutiny.” *Rose v. Dep’t of Air Force*, 495 F.2d 261, 263 (2d Cir. 1974).

The Panel’s holding that the Secret Service records at issue in this case do not qualify as “agency records” under FOIA undermines that promise. In addition to being incompatible with binding Supreme Court precedent rejecting the “intent” of third parties as relevant to determining what is, or is not, an agency record, *see U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 147–48 (1989), the Panel’s decision threatens the public’s right to know how third-party communications influence government agencies.

For these reasons, amici urge the Court to grant Plaintiff-Appellee’s petition for panel rehearing or rehearing en banc.

## ARGUMENT

### I. The Panel’s interpretation of “agency records” is contrary to Supreme Court precedent.

While “agency record” is not defined in FOIA, the Supreme Court articulated a two-part test in *United States Department of Justice v. Tax Analysts*, 492 U.S. 136 (1989) (“*Tax Analysts II*”) for determining what kinds of records qualify. Under *Tax Analysts II*, a document is an agency record if (1) it was created or obtained by an agency, and (2) is under agency control at the time of the FOIA request. *Id.* at 144–45. The Court explained that an agency is “in control” of a document when it has “come into the agency’s possession in the legitimate conduct of its official duties.” *Id.* at 145. In so holding, the Court drew on the definition of “agency record” in the Records Disposal Act, 44 U.S.C. § 3301, which defines “agency records” as those “made or received by an agency of the United States Government under Federal Law or in connection with the transaction of public business.” 492 U.S. at 145 (quoting 44 U.S.C. § 3301) (emphasis removed).

The two-part test announced by the Supreme Court in *Tax Analysts II* is easily applicable. Indeed, the Court anticipated that “disputes over control should be infrequent” because “requested materials ordinarily will be in the agency’s possession at the time the FOIA request is made.” 492 U.S. at 146 n.6.

*Tax Analysts II* was consistent with prior Supreme Court decisions emphasizing that possession and use of records by agencies are key to determining whether they qualify as “agency records” under FOIA. For example, in *Kissinger v. Reporters Committee for Freedom of Press*, the Court held that written summaries and transcripts of Henry Kissinger’s telephone conversations prepared while he served as National Security Advisor were not agency records simply because Kissinger took the documents with him when he began work at the State Department. 445 U.S. 136, 157 (1980). The Supreme Court found that the papers were not agency records because “[t]hey never entered the State Department’s files, and they were not used by the Department for any purpose.” *Id.*; see also *Forsham v. Harris*, 445 U.S. 169, 185 (1980) (holding that raw data relied upon in a federally funded study was not an agency record because it was never obtained by the agency, even though the agency had the authority to do so).

In concluding that the Secret Service records sought by Plaintiff-Appellee are not “agency records” under FOIA, the Panel gave dispositive weight to the “intent” of the creator of those records. Op. 13 (“To determine whether an agency exercises control over documents obtained from an entity not covered by the FOIA, we ask whether the non-covered entity . . . has manifested a clear intent to

control the documents, such that the agency is not free to use and dispose of the documents as it sees fit.” (citations and internal quotation marks omitted)).<sup>3</sup>

The Panel decision’s approach directly contravenes the Supreme Court’s refusal to adopt an intent-focused test in *Tax Analysts II*. In that case the Court rejected a test that would “mak[e] the determination of ‘agency records’ *turn on the intent* of the creator of a document relied upon by an agency,” noting that “[s]uch a *mens rea* requirement is nowhere to be found in the Act” and that “discerning the intent of the drafters of a document” would be “an elusive endeavor.” 492 U.S. at 147–48 (emphasis added). Instead, the Court put forth an easily applied test, eschewing the difficulties of attempting to discern “intent” in favor of an objective analysis of the relationship between the record and the work of the agency. *See id.*

The Panel further erred in concluding that the campaign and transition teams’ “clear intent to control the documents” could be deduced from “confidential” markings on the documents and a generalized “expectation of privacy.” Op. 14. By doing so, the Panel vested executive branch agencies with the ability to evade disclosure of records obtained and used in connection with

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<sup>3</sup> The Panel also erred in finding that the Secret Service records are not “agency records” without any briefing from the parties on that issue. Under FOIA, “[t]he burden is on the agency to demonstrate, not the requester to disprove, that the materials sought are not ‘agency records’ or have not been ‘improperly’ ‘withheld.’” *Tax Analysts II*, 492 U.S. at 142 n.3 (citation omitted).

fulfilling their legitimate, official duties by pointing to arbitrary third-party assertions, ungoverned by any standards. The Panel’s decision runs counter to the statutory purpose of FOIA, which was enacted “to curb this [type of] unbridled discretion” by “clos[ing] the ‘loopholes which allow agencies to deny legitimate information to the public.’” *Tax Analysts II*, 492 U.S. at 150 (first quoting *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 385 (1980); then internally quoting S. Rep. No. 89-813, at 3 (1965), *as reprinted in Source Book* at 38).

Applying the governing two-part *Tax Analysts II* test, the records sought by Plaintiff-Appellee are unquestionably “agency records.” First, the visitor and scheduling documents shared with the Secret Service were “obtained” by the agency. *Tax Analysts II*, 492 U.S. at 144. Second, the records are in the “control” of the agency because they were materials that “c[a]me into the agency’s possession in the legitimate conduct of its official duties.” *Id.* at 145. In reaching a contrary conclusion, the Panel’s decision strays from the Supreme Court’s definition of “agency records” and its rejection of an intent-based test.

## **II. The Panel’s decision has broad ramifications for the public’s right to know how non-governmental entities influence government conduct.**

The Panel’s treatment of third-party “intent” as dispositive of whether a record is an “agency record” under FOIA threatens the public’s ability to learn how external parties interact with (and potentially influence) government agencies.

Specifically, the Panel suggests that communications between third parties and the government—records frequently relied upon by journalists in their reporting—may be outside the scope of the Act if the communications are marked “confidential” and the third party claims they were sent with an “expectation of privacy.” Op. 14.

Access to emails and other communications between non-governmental entities and executive branch agencies has allowed journalists to shed light on issues of public concern. For instance, in 2016, when the World Health Organization (“WHO”) issued reports finding that soft drinks were a key contributor to rising rates of child obesity around the world, the soft drink beverage industry sought to combat the WHO reports. *See* Carey Gillam, *Beverage Industry Finds Friend Inside U.S. Health Agency*, HuffPost (June 28, 2016), <https://perma.cc/5BC7-3X6H>. Through FOIA, journalists obtained emails from a beverage industry leader representing the interests of Coca-Cola to the director of the Centers for Disease Control and Prevention (“CDC”)’s Division for Heart Disease and Stroke Prevention. *Id.* The emails revealed the beverage industry’s complaints about the WHO’s call for regulations on sugary soft drinks, and the CDC director’s willingness to help the beverage industry organize in opposition to the regulations. *Id.* The emails helped spur additional public scrutiny of the CDC’s actions and inactions, including that it had not yet taken a position on limiting sugar consumption. *Id.* But under the Panel’s reasoning, if these email

communications were marked “confidential” and assertedly sent with an “expectation of privacy,” the CDC could have kept them from the public.

Similarly, emails obtained by *The New York Times* through FOIA revealed that alcohol manufacturers had exercised improper influence on a major National Institute on Alcohol Abuse and Alcoholism (“NIAAA”) study examining the effects of moderate alcohol consumption on cardiovascular disease. See Roni Caryn Rabin, *Federal Agency Courted Alcohol Industry to Fund Study on Benefits of Moderate Drinking*, N.Y. Times (Mar. 17, 2018), <https://perma.cc/LRH3-FPAM>. After the *Times* article, the National Institutes of Health (“NIH”) conducted an internal review that found that the interactions between NIAAA officials and the alcohol industry biased the design of the study to demonstrate the beneficial health effects of moderate alcohol consumption, leading NIH to terminate the study. Roni Caryn Rabin, *Major Study of Drinking Will Be Shut Down*, N.Y. Times (June 15, 2018), <https://perma.cc/V3D9-GKVE>. Had such emails been unavailable under FOIA because the alcohol manufacturer wanted to keep them private, journalists would have been unable to reveal how the NIAAA study put forth scientifically inaccurate information in favor of the alcohol industry.

As these examples illustrate, the Panel’s decision threatens to limit the news media’s ability to obtain information about, and thus report on, third-party

influence on government decision-making—reporting that is necessary to ensuring that government agencies are accountable to the public.

### CONCLUSION

The Panel’s decision contravenes established Supreme Court precedent, and its reasoning has broad ramifications for the disclosure of third-party communications with the government, which are relied upon by reporters and the news media to keep the public informed. Accordingly, amici respectfully request that the Court grant Plaintiff-Appellee’s petition for panel rehearing or rehearing en banc.

Dated: August 26, 2022

Respectfully submitted,

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## APPENDIX A

### SUPPLEMENTAL STATEMENT OF IDENTITY OF AMICI CURIAE

**The Reporters Committee for Freedom of the Press** is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

**Association of Alternative Newsmedia ("AAN")** is a not-for-profit trade association which represents nearly 100 alternative newspapers across North America. There are a wide range of publications in AAN, but all share an intense focus on local news, culture and the arts; an emphasis on point-of-view reporting and narrative journalism; a tolerance for individual freedoms and social differences; and an eagerness to report on issues and communities that many mainstream media outlets ignore. AAN members speak truth to power.

**The Atlantic Monthly Group LLC** is the publisher of *The Atlantic* and TheAtlantic.com. Founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others, *The Atlantic* continues its 160-year tradition of publishing award-winning journalism that challenges

assumptions and pursues truth, covering national and international affairs, politics and public policy, business, culture, technology and related areas.

**BuzzFeed, Inc.** is a social news and entertainment company that provides shareable breaking news, original reporting, entertainment, and video across the social web to its global audience of more than 200 million.

**Californians Aware** is a nonpartisan nonprofit corporation organized under the laws of California and eligible for tax exempt contributions as a 501(c)(3) charity pursuant to the Internal Revenue Code. Its mission is to foster the improvement of, compliance with and public understanding and use of, the California Public Records Act and other guarantees of the public's rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss.

**The Center for Investigative Reporting (d/b/a Reveal)**, founded in 1977, is the nation's oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website [www.revealnews.org](http://www.revealnews.org), the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country.

**The Committee to Protect Journalists** is an independent, nonprofit organization that promotes press freedom worldwide. We defend the right of journalists to report the news without fear of reprisal. CPJ is made up of about 40

experts around the world, with headquarters in New York City. A board of prominent journalists from around the world helps guide CPJ's activities.

**The Daily Beast** delivers award-winning original reporting and sharp opinion from big personalities in the arenas of politics, pop-culture, world news and more.

**First Amendment Coalition (“FAC”)** 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. FAC advances this purpose by working to improve governmental compliance with state and federal open government laws. FAC’s activities include free legal consultations on access to public records and First Amendment issues, educational programs, legislative oversight of California bills affecting access to government records and free speech, and public advocacy, including extensive litigation and appellate work. FAC’s members are news organizations, law firms, libraries, civic organizations, academics, freelance journalists, bloggers, activists, and ordinary citizens.

**First Look Institute, Inc.** is a non-profit digital media venture that produces *The Intercept*, a digital magazine focused on national security reporting. First Look

Institute operates the Press Freedom Defense Fund, which provides essential legal support for journalists, news organizations, and whistleblowers who are targeted by powerful figures because they have tried to bring to light information that is in the public interest and necessary for a functioning democracy.

**Forbes Media LLC** is the publisher of Forbes Magazine as well as an array of investment newsletters and the leading business news website, Forbes.com. Forbes has been covering American and global business since 1917.

**Gannett** is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month.

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

**Los Angeles Times Communications LLC** is one of the largest daily newspapers in the United States. Its popular news and information website, [www.latimes.com](http://www.latimes.com), attracts audiences throughout California and across the nation.

**The Media Institute** is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

**The National Freedom of Information Coalition** is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the District of Columbia. Through its programs and services and national member network, NFOIC promotes press freedom, litigation and legislative and administrative reforms that ensure open, transparent and accessible state and local governments and public institutions.

**The National Press Club** is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

**The National Press Club Journalism Institute** is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life,

empowering engaged citizens to shape democracy. The Institute promotes and defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

**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 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.

**NBCUniversal Media, LLC** is one of the world’s leading media and entertainment companies in the development, production and marketing of news, entertainment and information to a global audience. Among other businesses, NBCUniversal Media, LLC owns and operates the NBC television network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks, including MSNBC and CNBC, and a television-stations group consisting of owned-and-operated television stations, including WNBC in New York, that produce substantial amounts of local news, sports and public affairs programming. NBC News produces the “Today” show, “NBC Nightly

News with Lester Holt,” “Dateline NBC,” “Rock Center with Brian Williams” and “Meet the Press” and operates NBCNews.com.

**The News Leaders Association** was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

**The News Media Alliance** is a nonprofit organization representing the interests of digital, mobile and print news publishers in the United States and Canada. The Alliance focuses on the major issues that affect today's news publishing industry, including protecting the ability of a free and independent media to provide the public with news and information on matters of public concern.

**The New York Times Company** is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com.

**The Online News Association** is the world’s largest association of digital journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and

support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

**POLITICO** is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to nearly 300 reporters, editors and producers. It distributes 30,000 copies of its Washington newspaper on each publishing day and attracts an influential global audience of more than 35 million monthly unique visitors across its various platforms.

**Pro Publica, Inc. (“ProPublica”)** is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer Prizes, most recently a 2020 prize for national reporting, the 2019 prize for feature writing, and the 2017 gold medal for public service. ProPublica is supported almost entirely by philanthropy and offers its articles for republication, both through its website, [propublica.org](http://propublica.org), and directly to leading news organizations selected for maximum impact. ProPublica has extensive regional and local operations, including ProPublica Illinois, which began publishing in late 2017 and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer Prize for Local Reporting, an initiative with the Texas Tribune, which launched in March 2020, and a series of Local Reporting Network partnerships.

**Radio Television Digital News Association (“RTDNA”)** is the world’s largest and only professional organization devoted exclusively to electronic

journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

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

**The Society of Environmental Journalists** is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

**Society of Professional Journalists (“SPJ”)** is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

**The Tully Center for Free Speech** began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief of amici curiae complies with (1) the type-volume limitation of Fed. R. App. P. 29(a)(5), because it contains 1919 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and (2) 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 proportionately spaced typeface using Microsoft Word in 14-point, Times New Roman font.

Dated: August 26, 2022

*/s/ Katie Townsend* \_\_\_\_\_  
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REPORTERS COMMITTEE FOR  
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