

No. 17-56331

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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COURTHOUSE NEWS SERVICE,  
Plaintiff-Appellant,

v.

DAVID YAMASAKI, in his official capacity as Court Executive Officer/Clerk of  
the Orange County Superior Court,  
Defendant-Appellee.

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On Appeal from the United States District Court  
for the Central District of California

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**BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE  
FOR FREEDOM OF THE PRESS AND 31 MEDIA ORGANIZATIONS IN  
SUPPORT OF PLAINTIFF-APPELLANT URGING REVERSAL**

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Bruce D. Brown, Esq.

*Counsel of Record*

Gregg P. Leslie, Esq.

Caitlin V. Vogus, Esq.

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15<sup>th</sup> St. NW, Suite 1250

Washington, D.C. 20005

Telephone: (202) 795-9300

Facsimile: (202) 795-9310

*Additional amici counsel listed in Appendix B*

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**STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE***

*Amici curiae* are The Reporters Committee for Freedom of the Press, American Society of News Editors, The Associated Press, Association of Alternative Newsmedia, Bay Area News Group, California News Publishers Association, Californians Aware, The Center for Investigative Reporting, Dow Jones & Company, Inc., The E.W. Scripps Company, First Amendment Coalition, First Look Media Works, Inc., Gannett Co., Inc., GateHouse Media, LLC, International Documentary Assn., Investigative Reporting Workshop at American University, Los Angeles Times Communications LLC, The McClatchy Company, MediaNews Group Inc., dba Digital First Media, LLC, MPA – The Association of Magazine Media, National Newspaper Association, National Press Photographers Association, New England First Amendment Coalition, News Media Alliance, Online News Association, The Orange County Register, Radio Television Digital News Association, Reporters Without Borders, The Seattle Times Company, Society of Professional Journalists, Southern California News Group, and Tully Center for Free Speech. A supplemental statement of identity and interest of *amici curiae* is included below as Appendix A.

*Amici* file this brief in support of Plaintiff-Appellant Courthouse News Service (“CNS”). As members of the news media or organizations who advocate on the news media’s behalf, *amici* have a strong interest in the policies governing

the right of access to court documents. Timely access to court documents, including complaints, is essential to reporting on the legal system and the judicial branch. *Amici* write to emphasize the public interests at stake in this case and the importance to members of the news media and the public of access to civil complaints that is contemporaneous to their filing.

### **SOURCE OF AUTHORITY TO FILE**

Counsel for Plaintiff-Appellant and Defendant-Appellee have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

**FED. R. APP. 29(A)(4)(E) STATEMENT**

*Amici* declare that:

1. no party's counsel authored the brief in whole or in part;
2. no party or party's counsel contributed money intended to fund preparing or submitting the brief; and
3. no person, other than *amici*, their members or their counsel, contributed money intended to fund preparing or submitting the brief.

## SUMMARY OF THE ARGUMENT

As the U.S. District Court for the Central District of California (the “district court”) concluded, the First Amendment right of access requires timely access to civil complaints. *Amici* write to emphasize that both the principles of the First Amendment and the realities of the news cycle lead to the conclusion that “timely access” nearly always means access contemporaneous to the filing of a complaint.

Immediate access to such public records is constitutionally required. Every federal appellate court to consider the issue has held that the First Amendment right of access applies in the civil context. And, because any delay can result in a complete denial of meaningful access, the First Amendment requires contemporaneous access to civil complaints. The district court’s use of business hours to determine that the Orange County Superior Court is providing timely access, however, skews the analysis and could easily permit delays of more than 24 hours—delays that can render the First Amendment right of access meaningless.

Not only is contemporaneous access to civil complaints constitutionally required, but it also greatly benefits the public. The press and the public have a right to learn about the matters consuming judicial resources and occupying space on the dockets of the public court system. Civil complaints are the foundational documents in a case and reveal a wealth of information about how litigants use the judicial branch, how the law exposes citizens to suit or provides remedies, and how

effectively the judiciary functions. Contemporaneous access to civil complaints ensures that the public learns about important cases while they are newsworthy. Such prompt access also promotes accuracy in reporting and leads to more meaningful public debate about those cases.

Finally, CNS's commercial interest in civil complaints is immaterial to the determination of its First Amendment rights. All members of the public, including for-profit news organizations, have a presumptive right of access to judicial records and proceedings under the First Amendment. The fact that CNS seeks to profit by disseminating information derived from civil complaints is irrelevant, as is any potential commercial interest of CNS's readership.

Therefore, *amici* urge this Court to reverse the district court's order denying a motion for preliminary injunction and hold that the First Amendment's presumption of timely access creates a qualified right of access to civil complaints contemporaneous with their filing.

## ARGUMENT

### **I. The First Amendment right of timely access requires access to civil complaints contemporaneously with their filing.**

The First Amendment right to free speech—a cornerstone of our constitutional system—“would lose much meaning” without the implied right of access to public proceedings. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S.

555, 576–77 (1980). Indeed, the Ninth Circuit has recognized that the two are “inextricably intertwined,” because, while the First Amendment protects rigorous debate of governmental activities, it is the right of access that guarantees it is an informed debate. *Courthouse News Service v. Planet*, 750 F.3d 776, 785 (9th Cir. 2014) (“*Planet I*”) (citing *Cal. First Amendment Coal. v. Woodford*, 299 F.3d 868, 874 (9th Cir. 2002)). This right of access applies to judicial records, including civil complaints. *See id.* at 786 (stating that “the federal courts of appeals have widely agreed that [the right of access] extends to civil proceedings and associated records and documents”). And as this Court has held, the public has a First Amendment right of “timely access” to civil complaints. *Id.* at 788.

When the First Amendment right of access applies, “access should be immediate and contemporaneous.” *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994), *superseded on other grounds as recognized by Bond v. Utreras*, 585 F.3d 1061, 1068 n.4 (7th Cir. 2009). The Supreme Court has stated that a loss of First Amendment rights, “for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (citation omitted). Indeed, the Ninth Circuit has held that even a 48-hour delay in unsealing judicial records is improper, because the effect of the delay acts as a “total restraint on the public’s first amendment right of access” during that time. *Associated Press v. Dist. Court*, 705 F.2d 1143, 1147

(9th Cir. 1983). Thus, timely access to a civil complaint is access that is contemporaneous with the filing of the complaint. *See Co. Doe v. Pub. Citizen*, 749 F.3d 246, 272 (4th Cir. 2014) (emphasizing that “the public and press generally have a contemporaneous right of access to court documents”).

The district court concluded that the Orange County Superior Court was providing timely access to civil complaints because 89% of complaints filed in the court became public within eight business hours. *Courthouse News Service v. Yamasaki*, No. 8:17-cv-00126-AG-KES, 2017 WL 3610481, at \*3 (C.D. Cal. Aug. 7, 2017). However, the district court’s use of business hours in determining timely access does not properly protect the public’s right to contemporaneous access. While “eight business hours” may not initially appear to be a much of a delay, in reality it could permit lengthy, unconstitutional delays. A court’s “business hours” for providing records to the public may be significantly less than the hours in which employees are receiving and processing complaints. *See, e.g., Courthouse News Service v. Planet*, No. CV 11-08083-SJO, 2016 WL 4157210, at \*20 (C.D. Cal. May 26, 2016) (noting that the Ventura County Superior Court Records Department closes to the public at 3 p.m., while complaints may be filed until 4:30 p.m.). Thus, depending on what time of day a complaint is filed, a delay of up to “eight business hours” could in reality be a delay of more than 24 hours, deferring access for up to two calendar days after the complaint was filed. These kinds of

delays serve as “a total restraint on the public’s first amendment right of access.”

*See Associated Press*, 705 F.2d at 1147.

*Amici* recognize that the First Amendment right of timely access to civil complaints is a qualified right and “may be overcome by an ‘overriding [governmental] interest based on findings that closure is essential to preserve higher values.’” *Planet I*, 750 F.3d at 793 n.9 (alteration in original) (quoting *Leigh v. Salazar*, 677 F.3d 892, 898 (9th Cir. 2012)). But because the district court erroneously concluded that the Orange County Superior Court was already providing timely access to civil complaints, it did not analyze whether the First Amendment presumption of timely access was overcome here. Although the district court refers to privacy concerns and the tax burden of hiring more staff to provide faster processing, *Yamasaki*, 2017 WL 3610481, at \*4, its truncated and incomplete analysis does not demonstrate that these interests are compelling interests that overcome the First Amendment right of timely access.

**II. Contemporaneous access to civil complaints benefits the public and the press, and even brief delays can be detrimental.**

Contemporaneous access to civil complaints is not only constitutionally required, it is also essential to the public’s knowledge about newsworthy litigation and the functioning of the judicial system. When news media organizations like

CNS and others have contemporaneous access to civil complaints, it is the public that benefits. As this Court has recognized:

The news media's right of access to judicial proceedings is essential not only to its own free expression, but also to the public's. . . . We have observed that the news media, when asserting the right of access, 'are surrogates for the public. . . . The free press is the guardian of the public interest, and the independent judiciary is the guardian of the free press.'

*Planet I*, 750 F.3d at 786 (quoting *Leigh*, 677 F.3d at 900); see also *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 490–91 (1975) (“[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations.”). Contemporaneous access to civil complaints fosters public understanding and discussion of judicial affairs, allows the press to report on new civil disputes at a moment when they are highly newsworthy, and enhances the accuracy and completeness of news reports. These benefits of timely access to civil complaints flow, ultimately, to the public, and even a short delay—such as those permitted below by the district court—can be detrimental to that process.

**A. Contemporaneous access promotes greater public understanding of judicial processes and matters occupying the courts' dockets.**

The American people rely on the news media for information about the workings of government, including the judicial system. As the Supreme Court has stated: “[An] untrammelled press [is] a vital source of public information, . . . and an informed public is the essence of working democracy.” *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 585 (1983) (alteration in original) (quoting *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936)); *see also N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring) (writing that “the Founding Fathers gave the free press the protection . . . so that it could bare the secrets of government and inform the people”).

The public has a right to be informed about matters that are now pending before state courts and that may demand court resources for years to come. *See In re NVIDIA Corp. Derivative Litig.*, No. 4:06-cv-06110-SBA (JCPX), 2008 WL 1859067, at \*3 (N.D. Cal. Apr. 23, 2008) (“[W]hen a plaintiff invokes the Court’s authority by filing a complaint, the public has a right to know who is invoking it, and towards what purpose, and in what manner.”). Indeed, the public can engage in meaningful discussion and debate about pending lawsuits, and can observe the operation of the judicial system, only when it knows those lawsuits are happening and can access prejudgment records. *See Seattle Times Co. v. U.S. Dist. Court*,

845 F.2d 1513, 1517 (9th Cir. 1988) (stating that access to pretrial documents is “important to a full understanding of the way in which the judicial process and the government as a whole are functioning” (citation omitted)). For that reason, timely access to civil complaints is “an essential part of the First Amendment’s purpose to ‘ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.’” *Planet I*, 750 F.3d at 785 (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604 (1982)). Even a brief delay in access to newly filed civil complaints undermines the public’s powerful interest in timely information about cases pending before the courts. *See Pub. Citizen*, 749 F.3d at 272 (recognizing that “the public benefits attendant with open proceedings are compromised by delayed disclosure”).

**B. Contemporaneous access permits the news media to report on civil lawsuits when they are newsworthy.**

Immediacy is often an essential component of newsworthiness, affecting how a story is covered or whether it is covered at all. As one journalism scholar explained, “[I]f a man is shot at a drugstore in the morning and police are searching for a suspect, then that’s news in the morning. But if by late afternoon, police have arrested a woman suspected in the shooting, then the arrest is more timely than the shooting in the 6:00 p.m. newscast.” Janet Kolodzy, *Convergence Journalism: Writing and Reporting Across the News Media* 59 (2006) (noting also

that “[i]t is, after all, called the ‘news’ business and not the ‘olds’ business”); *see also* Fred Fedler et al., *Reporting for the Media* 123 (8th ed. 2005) (describing timeliness as one of the key characteristics of news).

The Supreme Court and federal appeals courts have repeatedly recognized timeliness as a basic feature of news. *See Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 561 (1976) (“As a practical matter . . . the element of time is not unimportant if press coverage is to fulfill its traditional function of bringing news to the public promptly.”). As the Seventh Circuit wrote of the right of access to judicial records, “The newsworthiness of a particular story is often fleeting. To delay . . . disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.” *Grove Fresh Distributors, Inc.*, 24 F.3d at 897.

Immediacy has always been a fundamental element of newsworthiness. “The peculiar value of news is in the spreading of it while it is fresh . . . .” *Int’l News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918). This immediacy is even more vital in the digital era, because, as technology advances, the definition of “fresh” continues to evolve. The websites of the *Los Angeles Times* and *The New York Times*, for example, measure the timeliness of news updates in minutes. Other news services, such as Dow Jones Newswires, and social media platforms like Twitter, mark new posts by the second. In such a fast-paced world, what may be relevant and informative to the public this afternoon may not be as

much so by tonight or tomorrow. In short, “In the Internet age, a deadline passes every second.” *See* Toni Locy, *Covering America’s Courts* 13 (2013).

Moreover, with the advent of electronic filing, immediate reporting on litigation has become even more achievable. Courts that use modern electronic filing methods are capable of generating digital copies of complaints and other judicial documents automatically, allowing them to be shared with the public immediately. The system in Orange County Superior Court is one such example. *See* Appellee’s Response to Mot. to Assign Case for Hearing at 3, *Courthouse News Service v. Yamasaki*, No. 17-56331 (9th Cir. Sept. 7, 2017), ECF No. 6. Courts have recognized that the potential for *immediate* access provided by electronic filing increases judicial transparency. *See, e.g., 25 Years Later, PACER, Electronic Filing Continue to Change Courts*, U.S. Courts (Dec. 9, 2013), <https://perma.cc/A5X5-U6YQ> (noting that PACER, the federal court electronic filing system, allows for “track[ing] cases and case documents in nearly real time,” which promotes “expanded transparency on court affairs”).

Reporters routinely rely on newly filed civil complaints to disseminate information about topics of public concern—often the same day. *See, e.g.,* Louis Casiano Jr., *Parents of 8-year-old Newport Beach Boy Fatally Struck by Trash Truck Sue Company, Driver*, Orange County Reg. (Aug. 23, 2017), <https://perma.cc/9GZM-XU3Z> (reporting at 3:22 p.m. on a civil suit filed in

Orange County Superior Court that day), Louis Sahagun, *Lawsuit Aims to End Commercial Fur Trapping in California*, LA. Times (Sept. 13, 2017), <https://perma.cc/UM25-L8KM> (reporting at 3:50 p.m. on a civil suit filed against the state Department of Fish and Wildlife that day).

In the modern news environment, court policies that delay access to judicial records can amount to a complete denial of meaningful access, because “old news” may not receive the same level of public attention as timely news, and thus may not be published at all. In contrast, contemporaneous access to civil complaints allows the news media to learn of new civil lawsuits as they are filed and to report on them to the public when their newsworthiness is at a height.

**C. Contemporaneous access fosters more accurate and complete news reporting.**

Court records are among the most reliable sources of information for reporting on lawsuits. In today’s news cycle, where stories build upon each other and are updated by the minute online, it is important that the first news stories about a lawsuit be accurate and complete, with as much information as possible derived from official, primary sources. Reporting on newly filed cases will be more authoritative and accurate if the complaints themselves, including their exhibits, are available for inspection, copying, and reference by members of the news media immediately after the complaint is filed.

Reporters and their readers benefit tremendously when news reports can reference, quote from, and even hyperlink to court documents. In her textbook on legal news reporting, professor and veteran journalist Toni Locy stresses this point. *See Locy, supra*, at 61–67 (focusing on the theme that, when reporting on courts, “reading is fundamental”). Locy advises reporters not to rely solely on press releases and statements given by attorneys and to be aware of the potential for ulterior motives that lawyer-advocates may have when speaking with the press. *Id.* at 3–4. Locy instructs reporters instead to “review[] court filings or other public records,” among other things, to determine whether and how a fact or allegation should be reported. *Id.* at 9. Thus, immediate access to primary source documents is important for reporters writing the first news stories about a lawsuit to make their reporting more accurate and fair.

Contemporaneous access to civil complaints also facilitates thorough and complete reporting by the news media. Journalists rely on the information in civil complaints to report the “core dispute” underlying newly filed civil claims. *See Beth Winegarner, 6 Tips for Reporters Tracking State Legal Cases*, Poynter (Sept. 27, 2013), <https://perma.cc/64DQ-5WWX> (recommending that reporters read court documents in newly filed cases “to find out what the core dispute is about—and what kind of legal remedies, including money, the plaintiffs are asking for”). Moreover, timely access to civil complaints allow reporters to shed light on

important facts underlying the causes of action. *See, e.g.*, Nina Agrawal, *L.A. County Sues Over Reopening of Aliso Canyon*, L.A. Times (July 21, 2017), <https://perma.cc/EQN4-TCNG> (referencing statements by public officials appearing in exhibits attached to a complaint); Abby Sewell, *Former Top Attorney Sues L.A. County Over Ouster*, L.A. Times (May 23, 2016), <https://perma.cc/9J79-9ALR> (relying on complaint to report on alleged events that preceded firing a well-known government attorney). Those facts, however, may be missing from or diminished within the public debate if access to a complaint is delayed until after a reporter's story on the civil action. Thus, contemporaneous access to newly filed civil complaints allows the press to provide the public with a full and complete understanding of a case, including the factual underpinnings of the claims.

**III. Profit motive of a publisher and its readership are irrelevant to the constitutional right of access.**

The district court correctly noted “that First Amendment rights apply to news organizations even when they have a profit motive.” *Yamasaki*, 2017 WL 3610481, at \*3. However, in denying CNS's request for a preliminary injunction, the district court repeatedly emphasized CNS's profit motive and noted that the “vast majority” of its readership consists of lawyers in law firms, who likely have a commercial interest in accessing complaints immediately after they are filed. *Id.* at \*2, \*4. The district court weighed the potential costs to taxpayers for quicker

access against the interest in “promoting CNS’s profits” and concluded that “the interests that would be served by CNS’s proposals are dwarfed by the burdens it would impose.” *Id.* at \*4.

The First Amendment right of timely access to civil complaints is not conditioned on the motivation of the entity or individual seeking access. Rather, in determining whether the First Amendment right of access applies, courts look to the nature of the proceeding or document itself, asking “whether the place and process have historically been open to the press and general public” and “whether public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8–10 (1986) (*Press-Enterprise II*). When the First Amendment right of access applies, it “may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values.” *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984) (*Press-Enterprise I*) (internal quotations omitted).

Courts have repeatedly determined that commercial interest is irrelevant to a constitutional inquiry concerning First Amendment rights. *See Harte-Hanks Commc’ns v. Connaughton*, 491 U.S. 657, 667 (1989) (“If a profit motive could somehow strip communications of the otherwise available constitutional protection, our cases from *New York Times* to *Hustler Magazine* would be little more than empty vessels.”); *Pittsburgh Press Co. v. Pittsburgh Com. on Human*

*Relations*, 413 U.S. 376, 385 (1973) (“If a newspaper [or website]’s profit motive were determinative, all aspects of its operations . . . would be subject to regulation if it could be established that they were conducted with a view toward increased sales,” and “[s]uch a basis for regulation clearly would be incompatible with the First Amendment”). The Supreme Court has thus made it clear that any applicable First Amendment rights operate with full force regardless of whether a news organization seeks to earn a profit or to provide information free of charge.

In addition, the First Amendment right of access is held broadly by the general public. A single news organization’s commercial model does not affect, let alone extinguish, a constitutional right of access held by the public. All members of the public, not just CNS’s paid subscribers, would benefit from access, and all possess a First Amendment right of timely access to civil complaints, including for-profit news media organizations. *See Richmond Newspapers*, 448 U.S. at 586 n.2 (stating that “the media’s right of access is at least equal to that of the general public”). If profit motive were relevant to determining whether the constitutional right of access to judicial records applies—as the district court’s discussion of CNS’s business model implies—then most news organizations would be stripped of their right of access, to the substantial detriment of the public. Countless newspapers, including *The New York Times*, *The Washington Post*, and *The Wall Street Journal*, for example, require paid subscriptions to access full

online content, and articles in the print editions appear alongside paid advertisements. Such for-profit activity helps to sustain the news industry. Any argument “that the constitutional guarantees of freedom of speech and of the press are inapplicable” where speech is commercially motivated would “shackle the First Amendment in its attempt to secure the widest possible dissemination of information from diverse and antagonistic sources.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964) (internal quotations omitted). In short, that CNS might sell news content to the public after exercising its right of access to civil complaints “is as immaterial in this connection as is the fact that newspapers and books are sold.” *Id.*

## CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court recognize that the First Amendment right of access to civil complaints requires contemporaneous access upon filing, and reverse the district court's order.

Respectfully submitted,

/s/ Bruce D. Brown

Bruce D. Brown

*Counsel of Record*

Gregg Leslie

Caitlin Vogus

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1250

Washington, D.C. 20005

Phone: (202) 795-9300

Fax: (202) 795-9310

bbrown@rcfp.org

\*Additional counsel for *amici* are listed in Appendix B.

Dated:           October 10, 2017  
                    Washington, D.C.

**CERTIFICATE OF COMPLIANCE WITH RULE 32(G)**

I, Bruce D. Brown, do hereby certify that the foregoing brief of *amici curiae*:

- 1) Complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,066 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as calculated by the word-processing system used to prepare the brief; and
- 2) 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 in 14-point, Times New Roman font.

/s/ Bruce D. Brown  
Bruce D. Brown, Esq.  
*Counsel of Record*  
THE REPORTERS COMMITTEE  
FOR FREEDOM OF THE PRESS

Dated:           October 10, 2017  
                    Washington, D.C.

## APPENDIX A

### SUPPLEMENTAL STATEMENT OF IDENTITY OF *AMICI CURIAE*

**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.

With some 500 members, **American Society of News Editors** (“ASNE”) is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

**The Associated Press (“AP”)** is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content

providers. The AP operates from 300 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

**Association of Alternative Newsmedia ("AAN")** is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like *The Village Voice* and *Washington City Paper*. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

**Bay Area News Group** is operated by MediaNews Group, one of the largest newspaper companies in the United States with newspapers throughout California and the nation. The Bay Area News Group includes *The Oakland Tribune*, *The Daily Review*, *The Argus*, *San Jose Mercury News*, *Contra Costa Times*, *Marin Independent Journal*, *West County Times*, *Valley Times*, *East County Times*, *Tri-Valley Herald*, *Santa Cruz Sentinel*, *San Mateo County Times*, *Vallejo Times-Herald* and *Vacaville Reporter*, all in California.

**The California News Publishers Association ("CNPA")** is a nonprofit trade association representing the interests of over 1300 daily, weekly and student newspapers and news websites throughout California.

**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 (CIR)**, founded in 1977, is the nation's first nonprofit investigative journalism organization. CIR produces investigative journalism for its <https://www.revealnews.org/> website, the Reveal national public radio show and podcast, and various documentary projects - often in collaboration with other newsrooms across the country.

**Dow Jones & Company, Inc.**, is a global provider of news and business information, delivering content to consumers and organizations around the world across multiple formats, including print, digital, mobile and live events. Dow Jones has produced unrivaled quality content for more than 130 years and today has one of the world's largest newsgathering operations globally. It produces leading publications and products including the flagship Wall Street Journal; Factiva; Barron's; MarketWatch; Financial News; Dow Jones Risk & Compliance; Dow Jones Newswires; and Dow Jones VentureSource.

**The E.W. Scripps Company** serves audiences and businesses through television, radio and digital media brands, with 33 television stations in 24

markets. Scripps also owns 33 radio stations in eight markets, as well as local and national digital journalism and information businesses, including mobile video news service Newsy and weather app developer WeatherSphere. Scripps owns and operates an award-winning investigative reporting newsroom in Washington, D.C. and serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

**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.

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

**Gannett Co., Inc.** is an international news and information company that publishes 109 daily newspapers in the United States and Guam, including USA TODAY. Each weekday, Gannett's newspapers are distributed to an audience of more than 8 million readers and the digital and mobile products associated with the

company's publications serve online content to more than 100 million unique visitors each month.

**GateHouse Media** is a preeminent provider of print and digital local content and advertising in small and midsize markets. Our portfolio of products, which includes 404 community publications and more than 350 related websites and six yellow page directories, serves over 128,000 business advertising accounts and reaches approximately 10 million people on a weekly basis.

**The International Documentary Association (IDA)** is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

**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](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** and **The San Diego Union-Tribune, LLC** are two of the largest daily newspapers in the United States. Their popular news and information websites, [www.latimes.com](http://www.latimes.com) and

www.sandiegouniontribune.com, attract audiences throughout California and across the nation.

**The McClatchy Company** is a 21st century news and information leader, publisher of iconic brands such as the Miami Herald, The Kansas City Star, The Sacramento Bee, The Charlotte Observer, The (Raleigh) News and Observer, and the (Fort Worth) Star-Telegram. McClatchy operates media companies in 28 U.S. markets in 14 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, Calif., and listed on the New York Stock Exchange under the symbol MNI.

**MediaNews Group Inc., dba Digital First Media**, publishes the San Jose Mercury News, the East Bay Times, St. Paul Pioneer Press, The Denver Post and the Detroit News and other community papers throughout the United States, as well as numerous related online news sites.

**MPA – The Association of Magazine Media (“MPA”)** is the largest industry association for magazine publishers. The MPA, established in 1919, represents over 175 domestic magazine media companies with more than 900 magazine titles. The MPA represents the interests of weekly, monthly and quarterly publications that produce titles on topics that cover politics, religion,

sports, industry, and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

**National Newspaper Association** is a 2,400-member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Springfield, Illinois.

**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.

**New England First Amendment Coalition** is a non-profit organization working in the six New England states to defend, promote and expand public access to government and the work it does. The coalition is a broad-based organization of people who believe in the power of transparency in a democratic society. Its members include lawyers, journalists, historians and academicians, as well as private citizens and organizations whose core beliefs include the principles

of the First Amendment. The coalition aspires to advance and protect the five freedoms of the First Amendment, and the principle of the public's right to know in our region. In collaboration with other like-minded advocacy organizations, NEFAC also seeks to advance understanding of the First Amendment across the nation and freedom of speech and press issues around the world.

**The News Media Alliance** is a nonprofit organization representing the interests of online, mobile and print news publishers in the United States and Canada. Alliance members account for nearly 90% of the daily newspaper circulation in the United States, as well as a wide range of online, mobile and non-daily print publications. 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.

**Online News Association ("ONA")** is the world's largest association of online journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. ONA's more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the

interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

**The Orange County Register** is operated by MediaNews Group, one of the largest newspaper companies in the United States with newspapers throughout California and the nation. It publishes online and in a daily newspaper.

**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.

**Reporters Without Borders** has been fighting censorship and supporting and protecting journalists since 1985. Activities are carried out on five continents through its network of over 150 correspondents, its national sections, and its close collaboration with local and regional press freedom groups. Reporters Without Borders currently has 10 offices and sections worldwide.

**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.

**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.

**Southern California News Group** is operated by MediaNews Group, Inc., one of the largest newspaper companies in the United States with newspapers throughout California and the nation. The Southern California News Group includes the *Los Angeles Daily News, Torrance Daily Breeze, San Gabriel Valley Tribune, Whittier Daily News, Orange County Register, Riverside Press-Enterprise, Impacto USA, Long Beach Press Telegram, Inland Valley Daily Bulletin, Pasadena Star-News, Redlands Daily Facts, and San Bernardino Sun,* all in California.

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.

**APPENDIX B**

**ADDITIONAL COUNSEL FOR *AMICI CURIAE***

Kevin M. Goldberg  
Fletcher, Heald & Hildreth, PLC  
1300 N. 17th St., 11th Floor  
Arlington, VA 22209  
*Counsel for American Society of News  
Editors*

*Counsel for Association of Alternative  
Newsmedia*

Karen Kaiser  
General Counsel  
The Associated Press  
450 W. 33rd Street  
New York, NY 10001

Marshall Anstandig  
Senior VP/General Counsel  
Bay Area News Group  
750 Ridder Park Drive  
San Jose, CA 95190

James Chadwick  
Sheppard Mullin Richter & Hampton  
LLP  
390 Lytton Avenue  
Palo Alto, CA 94301  
*Additional Counsel for Bay Area  
News Group*

Jim Ewert, General Counsel  
Nikki Moore, Legal Counsel  
California News Publishers  
Association  
2701 K St.  
Sacramento, CA 95816

Terry Francke  
General Counsel  
Californians Aware  
2218 Homewood Way  
Carmichael, CA 95608

D. Victoria Baranetsky  
General Counsel  
The Center for Investigative  
Reporting  
1400 65th Street, Suite 200  
Emeryville, California 94608

Jason P. Conti  
Jacob P. Goldstein  
Dow Jones & Company, Inc.  
1211 Avenue of the Americas  
New York, NY 10036  
*Counsel for Dow Jones & Company,  
Inc.*

David M. Giles  
Vice President/  
Deputy General Counsel  
The E.W. Scripps Company  
312 Walnut St., Suite 2800  
Cincinnati, OH 45202

David Snyder  
First Amendment Coalition  
534 Fourth St., Suite B  
San Rafael, CA 94901

David Bralow  
First Look Media Works, Inc.  
18th Floor  
114 Fifth Avenue  
New York, NY 10011

Barbara W. Wall  
Senior Vice President & Chief Legal  
Officer  
Gannett Co., Inc.  
7950 Jones Branch Drive  
McLean, VA 22107  
(703)854-6951

Polly Grunfeld Sack  
SVP, General Counsel and Secretary  
GateHouse Media, LLC  
175 Sully's Trail, 3rd Floor  
Pittsford, New York 14534

Jeffrey Glasser  
Senior Counsel  
Tribune Company  
202 West First Street  
Los Angeles, CA 90012

Juan Cornejo  
The McClatchy Company  
2100 Q Street  
Sacramento, CA 95816

Marshall W. Anstandig  
Senior Vice President, General  
Counsel and Secretary  
Digital First Media  
4 North 2nd Street, Suite 800  
San Jose, CA 95113  
manstandig@bayareanewsgroup.com  
1-408-920-5784

James Chadwick  
*Counsel for MediaNews Group Inc.  
dba Digital First Media LLC*  
Sheppard Mullin Richter & Hampton  
LLP  
379 Lytton Avenue  
Palo Alto, CA 94301-1479  
jchadwick@sheppardmullin.com  
1-650-815-2600

James Cregan  
Executive Vice President  
MPA – The Association of Magazine  
Media  
1211 Connecticut Ave. NW Suite  
610  
Washington, DC 20036

Tonda F. Rush  
Counsel to National Newspaper  
Association  
CNLC, LLC  
200 Little Falls Street, Suite 405  
Falls Church, VA 22046  
(703) 237-9801 (p) (703) 237-9808  
(fax)  
tonda@nna.org

Mickey H. Osterreicher  
1100 M&T Center, 3 Fountain Plaza,  
Buffalo, NY 14203  
*Counsel for National Press  
Photographers Association*

Robert A. Bertsche (BBO #554333)  
Prince Lobel Tye LLP  
100 Cambridge Street  
Boston, MA 02114  
*Counsel for the New England First  
Amendment Coalition*

Kurt Wimmer  
Covington & Burling LLP  
850 10th Street NW  
Washington, DC 20001  
*Counsel for the News Media Alliance*

Laura R. Handman  
Alison Schary  
Davis Wright Tremaine LLP  
1919 Pennsylvania Avenue, NW  
Suite 800  
Washington, DC 20006  
Thomas R. Burke  
Davis Wright Tremaine LLP  
Suite 800  
500 Montgomery Street  
San Francisco, CA 94111  
*Counsel for Online News Association*

Kathleen A. Kirby  
Wiley Rein LLP  
1776 K St., NW  
Washington, DC 20006  
*Counsel for Radio Television Digital  
News Association*

Bruce E. H. Johnson  
Davis Wright Tremaine LLP  
1201 Third Ave., Suite 2200  
Seattle, WA 98101  
*Counsel for The Seattle Times Co.*

Bruce W. Sanford  
Mark I. Bailen  
Baker & Hostetler LLP  
1050 Connecticut Ave., NW  
Suite 1100  
Washington, DC 20036  
*Counsel for Society of Professional  
Journalists*

## CERTIFICATE OF SERVICE

I, Bruce D. Brown, do hereby certify that I have filed the foregoing Brief of *Amici Curiae* electronically with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on October 10, 2017.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Bruce D. Brown  
Bruce D. Brown, Esq.  
*Counsel of Record*  
THE REPORTERS COMMITTEE  
FOR FREEDOM OF THE PRESS

**Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28.1-1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number 17-56331**

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (*check appropriate option*):

- This brief complies with the length limits permitted by Ninth Circuit Rule 28.1-1. The brief is  words or  pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- This brief complies with the length limits permitted by Ninth Circuit Rule 32-1. The brief is  4,066  words or  pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- This brief complies with the length limits permitted by Ninth Circuit Rule 32-2(b). The brief is  words or  pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable, and is filed by (1)  separately represented parties; (2)  a party or parties filing a single brief in response to multiple briefs; or (3)  a party or parties filing a single brief in response to a longer joint brief filed under Rule 32-2(b). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- This brief complies with the longer length limit authorized by court order dated . The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). The brief is  words or  pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.
- This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 32-2 (a) and is  words or  pages, excluding the portions exempted by Fed. R. App. P. 32 (f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 29-2 (c)(2) or (3) and is  words or  pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
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Signature of Attorney or Unrepresented Litigant

/s/ Bruce D. Brown

Date

10/10/2017

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