No. 15-56090

In The
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EUTIQUIO ACEVEDO MENDEZ, et al.
Plaintiffs-Appellees,
v.

THE CITY OF GARDENA, et al.,
Defendants-Appellants

LOS ANGELES TIMES COMMUNICATIONS LLC et al.,
Intervenors and Appellees.

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

BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 26 MEDIA ORGANIZATIONS IN SUPPORT OF APPELLEES/INTERVENORS

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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.

American Society of News Editors is a private, non-stock corporation that has no parent.

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

BuzzFeed Inc. is a privately owned company, with no public companies that own 10% or more of its stock.

California Newspaper Publishers Association is a mutual benefit corporation organized under state law for the purpose of promoting and preserving the newspaper industry in California.

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

The Center for Investigative Reporting 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 E.W. Scripps Company is a publicly traded company with no parent company. No individual stockholder owns more than 10% of its 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.

First Look Media, 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 Media, Inc.

Freedom of the Press Foundation does not have a parent corporation, and no publicly held corporation owns 10% or more of the stock of the organization.

Gawker Media LLC is privately held and wholly owned by privately held Gawker Media Group, Inc. No publicly held corporation holds an interest of 10% or more in Gawker Media LLC.

The International Documentary Association is an non-for-profit organization with no parent corporation and no 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.

The McClatchy Company is publicly traded on the New York Stock Exchange under the ticker symbol MNI. Contrarius Investment Management Limited owns 10% or more of the common stock of The McClatchy Company.

The Media Consortium has no parent corporation and no stock.

MPA – The Association of Magazine Media has no parent companies, and no publicly held company owns more than 10% of its stock.

National Newspaper Association is a non-stock nonprofit Missouri corporation. It has no parent corporation and no subsidiaries.

The National Press Club 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.

Comcast Corporation and its consolidated subsidiaries own 100% of the common equity interests of NBCUniversal Media, LLC.

Newspaper Association of America is a nonprofit, non-stock corporation organized under the laws of the commonwealth of Virginia. It has no parent company.

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

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.

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

The Thomas Jefferson Center for the Protection of Free Expression is a nonprofit organization with no parent corporation and no stock.

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

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae are all news organizations that engage in journalism or represent the interests of journalists. This case is of particular importance to the *amici* because reporters regularly rely on access to court proceedings to report on matters of public concern. As "surrogates for the public," *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980), journalists need unfettered access to information that sheds light on the functioning of the courts and government bodies. An adverse holding in this appeal could significantly affect journalists' ability to obtain court records in a timely fashion.

The parties joining this brief are The Reporters Committee for Freedom of the Press, American Society of News Editors, Association of Alternative Newsmedia, BuzzFeed, California Newspaper Publishers Association, Californians Aware, The Center for Investigative Reporting, The E.W. Scripps Company, First Amendment Coalition, First Look Media Works, Inc., Freedom of the Press Foundation, Gawker Media LLC, International Documentary Assn., Investigative Reporting Workshop at American University, The McClatchy Company, The Media Consortium, MPA – The Association of Magazine Media, National Newspaper Association, The National Press Club, National Press Photographers Association, NBCUniversal Media, LLC, Newspaper Association of America, North Jersey Media Group Inc., Online News Association, Radio Television

Digital News Association, The Thomas Jefferson Center for Protection of Free Expression, and Tully Center for Free Speech. A more detailed description of *amici* can be found in Appendix A.

All parties have consented to the filing of this *amici curiae* brief.

RULE 29(C)(5) STATEMENT

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amici* declare:

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.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case arises out of the City of Gardena's attempt to keep videos that depict an issue of pressing public concern hidden from public view.

On June 2, 2013, City of Gardena police officers were involved in a shooting that ended in several civilian injuries and one civilian death. The shooting was captured on the officers' cruisers' dashboard-mounted cameras, or dashcams. *See generally* Order Granting Non-Party Media Organizations' Motion to Intervene and Unseal Documents. During discovery in a subsequent civil rights lawsuit, defendants-appellants including the City of Gardena (hereinafter, collectively, the "City") turned over the dashcam footage and other information subject to a court-approved protective order. The parties eventually reached a settlement, and that civil case was dismissed.

One month later, a number of media organizations—acting in accordance with a proviso in the protective order—filed a motion to intervene for the purpose of requesting the dashcam footage. The district court held that the First Amendment compelled immediate unsealing of the videos, and that the City had not presented sufficient justification for a stay of that decision. *Id.* at 13. Thereafter, the City filed a motion to stay with this Court, but only after the videos had already been released to the public. In their appeal, the City now argues, in part, that this Court should institute a Circuit-wide rule requiring an automatic stay

in future cases like this one that would bar the release of sealed documents pending any appeal. *See* Appellants' Opening Brief at 29.

The existing four-part test for determining whether an unsealing order should be stayed, however, which was applied by the district court here, best balances competing interests—especially the public's interest in holding the government accountable—and should not be abandoned. The City's purported policy arguments for a rule change have no basis in law, and give too little weight to the public's interest in government transparency. This Court should affirm the judgment of the district court.

ARGUMENT

I. The existing standard for issuing a stay of an unsealing order addresses competing interests, serves the public interest, and is consistent with the interests underlying the constitutional and common law presumptions of access to judicial documents.

A stay is an equitable remedy, *Hill v. McDonough*, 547 U.S. 573, 584 (2006), that the U.S. Supreme Court has made clear is not available as "a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks omitted). The district court in this case correctly followed U.S. Supreme Court precedent in applying a four-part test to determine whether to grant the City's request for a stay that examined: (1) the likelihood that the City would succeed on the merits on appeal, (2) the possibility

of irreparable injury to the parties requesting the stay, (3) the possibility of substantial injury to others, and (4) the public's interests in secrecy and disclosure. Order at 13. In short, before rejecting the City's request for a post-dismissal stay of its unsealing order, the district court considered the interests of all parties, including the City, other interested persons, and the public at large. *Id*.

An automatic-stay regime in cases like this one would upend the flexible nature of this equitable remedy, converting a stay from a remedy available only through the exercise of a court's measured discretion into a predetermined outcome that disregards the competing interests at stake. *See Meredith v. City of Winter Haven*, 320 U.S. 228, 235 (1943) ("An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity."). It would also undermine a key feature of this equitable remedy: a judge's discretion in issuing a stay must necessarily be concerned with how such a stay would affect the public. "The history of equity jurisdiction is the history of regard for public consequences . . . ." *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 500 (1941). Thus, when determining whether to grant equitable relief, like a stay, courts "should pay particular regard for the public consequences . . . ." *Winter v. NRDC*, 555 U.S. 7, 24 (2008) (internal quotation marks omitted); *see also id.* at 20 (noting that public interest is a consideration when issuing a preliminary injunction); *Nken*, 556 U.S.

at 434 (stating that "where the public interest lies" is one consideration toward granting a stay).

The public interest in allowing a court to refuse to stay an order releasing court records to the public dovetails with the interests that justify public access to court records in the first place. Those interests accordingly inform the analysis of whether stays should be mandatory. The public has a well-established right to obtain access to judicial records under both the First Amendment and common law. *See Courthouse News Serv. v. Planet*, 750 F.3d 776, 786 (9th Cir. 2014) (recognizing a First Amendment right of access to civil proceedings and records); *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) ("Those who seek to maintain the secrecy of documents attached to dispositive motions must meet the high threshold of showing that 'compelling reasons' support secrecy."). The "strong presumption" in favor of disclosure afforded by the First Amendment and common law may be overcome only by "compelling reasons supported by factual findings." *Id.* at 1178.

Whether the public's right of access to court records filed in connection with dispositive motions is viewed through a First Amendment or common-law lens, the interest in public access is substantial. The fundamental interest in public access to court records and proceedings springs from the fact that "a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs."

Mills v. Alabama, 384 U.S. 214, 218 (1966). First Amendment freedoms "share a common core purpose of assuring freedom of communication on matters relating to the functioning of government." *Richmond Newspapers*, 448 U.S. at 575 (plurality opinion). In short, access allows journalists and ordinary citizens to keep a "watchful eye on the workings of public agencies." *Kamakana*, 447 F.3d at 1178 (internal quotation marks omitted); *see also Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 386 n.15 (1979) ("[I]n some civil cases the public interest in access, and the salutary effect of publicity, may be as strong as, or stronger than, in most criminal cases.").

Because First Amendment rights are so fundamental to our constitutional system, courts are hesitant to tolerate even brief deprivations of those rights. *See, e.g.*, *Doe v. Harris*, 772 F.3d 563, 583 (9th Cir. 2014). The First Amendment interests of the press and the public in reporting on and monitoring official conduct and judicial proceedings are substantial in this and any case where governmental misconduct is at the heart of the claim. As the district court below explained, the videos at issue here were sealed only pursuant to the parties' agreement. Order at 12. Absent that agreement, and once they were filed as evidence in connection with a dispositive motion, the right of access applies.

The fundamental nature of the interests in access makes clear that an automatic stay would only serve to delay the accountability and oversight that the public wants and deserves.

II. The public's interest in government transparency and accountability overwhelms any interest in keeping the videos confidential.

The City argues that the "policy arguments in this case are overwhelming," presumably in its favor. Appellant's Opening Br. at 26. In fact, the opposite is true: the public interest in seeing video that both demonstrates how police acted and that reveals the considerations behind a large settlement in a civil rights lawsuit is itself overwhelming. This is true regardless of what the evidence shows; there is an identical public interest in seeing court filings that demonstrate that police acted appropriately as there is for filings revealing improper or illegal behavior.

The City's asserted interests, on the other hand, are not as significant in this case: its purported right of appeal is not rooted in the Constitution; it cannot use the expected fallout from its misconduct as a justification to conceal that misconduct; and it does not give due weight to the public's and the media's interests in open and transparent government.

A. Automatic stays in cases like this would thwart the news media's attempts to keep the public informed about its government.

In noting the fact that a police-involved shooting is necessarily controversial, the district court concluded that "it is not the function of the judiciary to decide political issues," Opinion at 2, finding instead that the straightforward application of the law allowed for immediate release of the videos. *Amici* agree that the duty of the court here is not to decide the political issue. Instead, its responsibility is to provide access as mandated by the First Amendment and common law so that the public can make informed decisions about controversies before it, and conduct meaningful oversight of the judicial system.

An automatic stay would fail to account for the paramount importance of open and transparent government in our constitutional system. That is, an automatic stay would impede not only the judiciary's role as "guardian of the free press," but also the press's role as "guardian of the public interest." *Leigh v. Salazar*, 677 F.3d 892, 900 (9th Cir. 2012). "The business of the press . . . is the promotion of truth regarding public matters by furnishing the basis for an understanding of them." *Associated Press v. United States*, 326 U.S. 1, 28 (1945) (Frankfurter, J., concurring). This case concerns not only a public matter, but a public matter that is particularly relevant at this moment in our history. As the City itself states, "The simple fact is that our communities have been rocked by

violence over the last several months as incomplete and evocative videos have been released, often before the entire facts of the case are known." Appellant's Opening Brief at 20. Thus, it is the press's role and duty to encourage discussion on the issue of officer-civilian relations and related topics, and disseminating information on these issues is part and parcel of this duty.

Even if the videos at issue here are, as the City claims, "incomplete" or "evocative," that is no ground for shielding them from the public. "The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the simple truth." *United States v. Alvarez*, 132 S. Ct. 2537, 2550 (2012) (plurality opinion). If the City wishes to prevent backlash, the correct course of action is not to ask a federal appellate court to adopt a default gag rule, but to release the videos and engage in a dialogue with the community about what those videos show. An automatic stay would undermine this fundamental maxim of our country's First Amendment jurisprudence.

The fact that the videos here were released and have been widely viewed demonstrates clearly that the public interest is served by disclosure. No violence or rioting was reported after the videos' release, as the City acknowledges, Appellant's Opening Brief at 28; the City of Gardena police did not sanction its officers, *see* Richard Winton, *Privacy often trumps transparency with police*

shooting videos, L.A. Times (May 19, 2015, 7:27 PM), *available at* https://perma.cc/67W3-RH8V; and those officers did not face criminal charges, *see* Response of L.A. County Sheriff's Dep't, Dist. Ct. Doc. 49 at 3 (July 12, 2014). Additional delay of the release of the videos during an appeal would not have served the public in any way.

Quick access to newsworthy information is an important element of journalism because it serves the interests of the public. Timely access to court documents makes reporting more accurate, fair, and complete, and thus should be encouraged by courts. Delay has consequences; if a controversy rages one day, and the supporting evidence is not released for several years, the public is poorly served. To fulfill its constitutional role of informing the people, the news media must report on events with the best information available to it in a timely manner. In the present case, the video was only released two years after the shooting incident. While that delay alone fails to help the public understand a controversial event, it would have been intolerable to impose an automatic stay and allow an even longer delay only because the City could not show a discretionary stay is in the public interest.

That timeliness constitutes a fundamental element of newsworthiness has not been lost on the nation's highest courts. *See Int'l News Serv. v. AP*, 248 U.S. 215, 235 (1918) ("The peculiar value of news is in the spreading of it while it is fresh

. . . ."); *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 or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression." *Grove Fresh Distribs. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) ; *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

The City argues that it paid "a premium"—namely, the $4.7 million settlement figure—to keep the videos confidential. Appellant's Opening Brief at 7; Order at 12. But, as the district court recognized, this sort of consideration does not constitute a compelling reason justifying confidentiality. "In general, 'compelling reasons' sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such 'court files might have become a vehicle for improper purposes,' such as the use of records to gratify spite, promote public scandal, circulate libelous statements, or release trade secrets." *Kamakana*, 447 F.3d at 1179 (quoting *Nixon v. Warner Commc'ns*, *Inc.* 435 U.S. 589, 598 (1978)). Getting one's money's worth from a bargain purposely designed to use

public money to avoid public accountability cannot possibly be treated as a compelling interest under this standard.

Automatic stays in cases like this one would undermine the very nature of equitable relief. It would dispossess district courts of their power to make those difficult fact-bound judgments that our federal judicial system entrusts to them. It would further undercut the principle that court records cannot be hidden from public view absent a compelling need.

B. The City cannot rely on the presumed response to its officers' conduct in order to prevent discovery of alleged misconduct.

The City also argues that release of the videos was improper because of "the impact that this release could have on the health and safety of not only the local community, but the nation as a whole." Appellant's Opening Br. at 20. Put another way, the City fears the backlash the officers' actions will trigger. They also voice concern for the officers' safety. *Id.* But "'[d]iscipline and accountability are essential to the police agency.'" *Fugate v. Phoenix Civil Serv. Bd.*, 791 F.2d 736, 741 (9th Cir. 1986) (quoting National Advisory Commission of Criminal Justice Standards and Goals, *Report on Police* 469-70 (1973)). "If police officers are not held accountable for their actions, then the utility of [legal remedies] in deterring wrongful conduct in the future will be reduced." *Conley v. City and County of San Francisco*, No. 12-cv-00454-JCS, 2013 WL 5379376, at *34 (N.D. Cal. Sept. 24,

2013) (citing *Newsome v. McCabe*, 256 F.3d 747, 752 (7th Cir. 2001)). The City cannot seek to sweep the consequences of its actions under the rug. The District Court already rejected this argument, ruling that the public was entitled to the videos. An automatic stay would only further delay public accountability, and allow extensive and excessive appeals as a delay tactic to avoid public release of videos like these.

The City also ignores the fact that the videos remained under seal, without the City demonstrating that such sealing was justified, far longer than they should have. There are two standards that a court may invoke in determining whether sealing a court record is warranted. During discovery, the relevant standard is whether "good cause" exists to seal the information; this is done by "balancing the needs for discovery against the need for confidentiality." *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) (internal quotation marks omitted). "When discovery material is filed with the court, however, its status changes." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1134 (9th Cir. 2003). The new standard— a much higher burden for the party seeking confidentiality—is the "compelling reasons" standard applied by the district court in this case. *Pintos*, 605 F.3d at 678; *see* Order at 11.

Thus, once the sealed material is filed with the court, it can remain sealed only by satisfying the higher burden. *See Kamakana*, 447 F.3d at 1180 ("[A]

'good cause' showing alone will not suffice to fulfill the 'compelling reasons' standard that a party must meet to rebut the presumption of access to dispositive pleadings and attachments."). The district court considered this issue thoroughly when the media organizations sought to have the disputed videos released. Critically, the dashcam footage first entered the record in late January 2015 as part of the plaintiffs' opposition to the defendants' motion for summary judgment. Order at 6. This is the point at which the higher standard to justify sealing arose. The media organizations' motion to unseal the videos was filed on June 8, 2015. *Id*. That is, the City received a benefit of several months of secrecy, the time between which the higher standard should have first applied and when the City had to actually argue that it met that standard. The City's brief makes much of the district court's quick action on July 14, 2015. *See* Appellant's Opening Brief at 14. Yet, in doing so, they fail to recognize the months-long period of improper secrecy that their confidentiality order gave them.

CONCLUSION

This Court should affirm the order unsealing the videotapes and denying a stay of that order. *Amici* have not discussed the Intervenors' argument that the appeal is moot and should be dismissed on that ground, but would support that remedy as well.

Respectfully submitted,

/s/ Bruce D. Brown
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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 3,057 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 for Mac 2016 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.

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.

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.

BuzzFeed 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.

The California Newspaper Publishers Association ("CNPA") is a nonprofit trade association representing the interests of nearly 850 daily, weekly and student newspapers throughout California. For over 130 years, CNPA has worked to protect and enhance the freedom of speech guaranteed to all citizens and to the press by the First Amendment of the United States Constitution and Article 1, Section 2 of the California Constitution. CNPA has dedicated its efforts to protect the free flow of information concerning government institutions in order for newspapers to fulfill their constitutional role in our democratic society and to advance the interest of all Californians in the transparency of government operations.

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) believes journalism that moves citizens to action is an essential pillar of democracy. Since 1977, CIR has relentlessly pursued and revealed injustices that otherwise would remain hidden from the public eye. Today, we're upholding this legacy and looking forward, working at the forefront of journalistic innovation to produce important stories that make a difference and engage you, our audience, across the aisle, coast to coast and worldwide.

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 34 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, Inc. is a new non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting.

Freedom of the Press Foundation is a non-profit organization that supports and defends public-interest journalism focused on transparency and accountability. The organization works to preserve and strengthen First and Fourth Amendment rights guaranteed to the press through a variety of avenues, including public advocacy, legal advocacy, the promotion of digital security tools, and crowd-funding.

Gawker Media LLC is the publisher of some of the web's best-loved brands and communities, including the eponymous Gawker, the gadget sensation Gizmodo, and the popular sports site Deadspin. Founded in 2002, Gawker's sites reach over 100 million readers around the world each month.

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 about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

The McClatchy Company, through its affiliates, is the third-largest newspaper publisher in the United States with 29 daily newspapers and related websites as well as numerous community newspapers and niche publications.

The Media Consortium is a network of the country's leading, progressive, independent media outlets. Our mission is to amplify independent media's voice, increase our collective clout, leverage our current audience and reach new ones.

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 Columbia, Missouri.

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 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.

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 that produce substantial amounts of local news, sports and public affairs programming. NBC News produces the "Today" show, "NBC Nightly News with Brian Williams," "Dateline NBC" and "Meet the Press."

Newspaper Association of America ("NAA") is a nonprofit organization representing the interests of more than 2,000 newspapers in the United States and Canada. NAA members account for nearly 90% of the daily newspaper circulation in the United States and a wide range of non-daily newspapers. The Association focuses on the major issues that affect today's newspaper industry, including protecting the ability of the media to provide the public with news and information on matters of public concern.

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.

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.

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 Thomas Jefferson Center for Protection of Free Expression is a nonprofit, nonpartisan organization in Charlottesville, Virginia. Founded in 1990, the Thomas Jefferson Center has as its sole mission the protection of freedom of speech and press. The Center pursues that mission in several ways, notably by filing amicus curiae briefs in federal and state courts in cases that raise important issues that affect members of the press and free expression generally.

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 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 electronic notice to all counsel of record on March 30, 2016. Upon approval and filing of this Brief, a true and correct paper copy of the Brief with updated Certificate of Service will be sent via first-class mail, postage pre-paid to counsel of record.

/s/ Bruce D. Brown