

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

THE SCHOOL BOARD OF BROWARD
COUNTY,

Petitioner,

v.

NIKOLAS CRUZ,

Respondent.

No. 18-014554 (26)

Judge: Henning

Civil Division

STATE OF FLORIDA,

Plaintiff,

v.

NIKOLAS JACOB CRUZ,

Defendant.

No. 18001958CF10A

Judge: Scherer

Criminal Division

**MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND
30 MEDIA ORGANIZATIONS FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN
SUPPORT OF SUN-SENTINEL COMPANY, LLC AND REPORTERS
PAULA MCMAHON AND BRITTANY WALLMAN**

The Reporters Committee for Freedom of the Press, American Society of News Editors,
The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia,
Bloomberg L.P., Boston Globe Media Partners, LLC, Brechner Center for Freedom of
Information, Cable News Network, Inc., CBS Broadcasting Inc., Cox Media Group, Inc., Dow
Jones & Company, Inc., The E.W. Scripps Company, Fox Television Stations, LLC, Gannett
Co., Inc., Hearst Corporation, Inter American Press Association, Los Angeles Times
Communications LLC, The Miami Herald, National Public Radio, Inc., The New York Times

Company, News Media Alliance, Nexstar Media Group, Inc., Online News Association, POLITICO LLC, Radio Television Digital News Association, Reporters Without Borders, Society of Professional Journalists, TEGNA Inc., Tully Center for Free Speech, and The Washington Post (collectively, “*amici*”) respectfully request that this Court grant leave to file the attached *amicus curiae* brief (Exhibit A) in support of Sun-Sentinel Company, LLC and reporters Paula McMahon and Brittany Wallman (collectively, the “Sun Sentinel”) in this matter. In support of this motion, *amici* state as follows:

Identity and Interest of *Amici*

1. The Reporters Committee is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the First Amendment rights and freedom of information interests of the news media and the public. The Reporters Committee has provided assistance, guidance, and research in First Amendment and freedom of information litigation since 1970.

2. 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.

3. The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The

AP operates from 280 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

4. The Associated Press Media Editors is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom leaders; and champions the First Amendment and promotes freedom of information.

5. 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.

6. Bloomberg L.P. operates Bloomberg News, a 24-hour global news service based in New York with more than 2,400 journalists in more than 150 bureaus around the world. Bloomberg supplies real-time business, financial, and legal news to the more than 319,000 subscribers to the Bloomberg Professional service world-wide and is syndicated to more than 1000 media outlets across more than 60 countries. Bloomberg television is available in more than 340 million homes worldwide and Bloomberg radio is syndicated to 200 radio affiliates nationally. In addition, Bloomberg publishes Bloomberg Businessweek, Bloomberg Markets and Bloomberg Pursuits magazines with a combined circulation of 1.4 million readers and Bloomberg.com and Businessweek.com receive more than 24 million visitors each month. In total, Bloomberg distributes news, information, and commentary to millions of readers and listeners each day, and has published more than one hundred million stories.

7. Boston Globe Media Partners, LLC publishes The Boston Globe, the largest daily newspaper in New England.

8. The Brechner Center for Freedom of Information (the “Brechner Center”) at the University of Florida in Gainesville exists to advance understanding, appreciation and support for freedom of information in the state of Florida, the nation and the world. Since its founding in 1977, the Brechner Center has served as a source of academic research and expertise about the law of gathering and sharing information, and the Center regularly appears as a friend-of-the-court in federal and state appellate cases nationwide where the public’s right to informed participation in government is at stake. The Center is exercising the academic freedom of its faculty to express their scholarly views, and is not submitting this brief on behalf of the University of Florida or the University of Florida Board of Trustees.

9. Cable News Network, Inc. (“CNN”), a Delaware corporation, is a wholly owned subsidiary of Turner Broadcasting System, Inc., which is ultimately a wholly-owned subsidiary of AT&T Inc., a publicly traded company. CNN is a portfolio of two dozen news and information services across cable, satellite, radio, wireless devices and the Internet in more than 200 countries and territories worldwide. Domestically, CNN reaches more individuals on television, the web and mobile devices than any other cable TV news organization in the United States; internationally, CNN is the most widely distributed news channel reaching more than 271 million households abroad; and CNN Digital is a top network for online news, mobile news and social media. Additionally, CNN Newsource is the world’s most extensively utilized news service partnering with hundreds of local and international news organizations around the world.

10. CBS Broadcasting Inc., on behalf of WFOR-TV and CBS News. WFOR-TV provides broadcast and online coverage of news about Miami-Dade, Broward and Monroe

counties. CBS News produces morning, evening and weekend news programming, as well as news and public affairs newsmagazine shows, such as “60 Minutes” and “48 Hours.”

11. Cox Media Group, Inc. is an integrated broadcasting, publishing, direct marketing and digital media company. Its operations include 15 broadcast television stations, a local cable channel, a leading direct marketing company, 85 radio stations, eight daily newspapers and more than a dozen non-daily print publications and more than 100 digital services.

12. 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.

13. The E.W. Scripps Company serves audiences and businesses through television, radio and digital media brands, with 33 television stations in 24 markets, including in West Palm Beach (WFTS), Ft. Myers (WFTX), and Tampa (WFTS). 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.

14. Directly and through affiliated companies, Fox Television Stations, LLC, owns and operates 28 local television stations throughout the United States. The 28 stations have a

collective market reach of 37 percent of U.S. households. Each of the 28 stations also operates Internet websites offering news and information for its local market.

15. Gannett Co., Inc. is a leading news and information company which publishes USA TODAY and more than 100 local media properties. Each month more than 110 unique visitors access content from USA TODAY and Gannett's local media organizations, putting the company squarely in the Top 10 U.S. news and information category.

16. Hearst Corporation is one of the nation's largest diversified media, information and services companies with more than 360 businesses. Its major interests include ownership of 15 daily and more than 30 weekly newspapers, including the San Francisco Chronicle, Houston Chronicle, and Albany Times Union; hundreds of magazines around the world, including Cosmopolitan, Good Housekeeping, ELLE, Harper's BAZAAR and O, The Oprah Magazine; 31 television stations, including Orlando, FL station WESH-TV and West Palm Beach, FL station WPBF-TV, which reach a combined 19 percent of U.S. viewers; ownership in leading cable television networks such as A&E, HISTORY, Lifetime and ESPN; global ratings agency Fitch Group; Hearst Health; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

17. The Inter American Press Association (IAPA) is a not-for-profit organization dedicated to the defense and promotion of freedom of the press and of expression in the Americas. It is made up of more than 1,300 publications from throughout the Western Hemisphere and is based in Miami, Florida.

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

19. The Miami Herald is a daily newspaper published by the McClatchy Company.

20. National Public Radio, Inc. (NPR) is an award-winning producer and distributor of noncommercial news, information, and cultural programming. A privately supported, not-for-profit membership organization, NPR serves an audience of 30 million people who listen to NPR programming and newscasts each week via more than 1000 noncommercial, independently operated radio stations, licensed to more than 260 NPR Members and numerous other NPR-affiliated entities. In addition, NPR is reaching an expanding audience via its digital properties, including podcasts (which see about 19 million unique users each month), social media, mobile applications, and NPR.org (which sees about 37 million unique visitors each month).

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

22. 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.

23. Nexstar Media Group, Inc. ("Nexstar") is a leading diversified media company that leverages localism to bring new services and value to consumers and advertisers through its traditional media, digital and mobile media platforms. Nexstar owns, operates, programs or

provides sales and other services to 169 television stations and related digital multicast signals reaching 100 markets or approximately 39% of all U.S. television households. Nexstar Media Group, Inc. is the parent company of Nexstar Broadcasting, Inc., the licensee of television stations WFLA and WTTA in Tampa, Florida.

24. 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.

25. POLITICO is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to more than 350 reporters, editors and producers. It distributes 30,000 copies of its Washington newspaper on each publishing day, publishes POLITICO Magazine, with a circulation of 33,000 six times a year, and maintains a U.S. website with an average of 26 million unique visitors per month. Politico also publishes numerous newsletters, including four dedicated to Florida.

26. 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.

27. 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.

28. 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.

29. TEGNA Inc. owns or services (through shared service agreements or other similar agreements) 46 television stations in 38 markets. TEGNA owns/operates WTSP-TV in Tampa, Florida (CBS) and WTLV (NBC) and WJXX (ABC) in Jacksonville, Florida.

30. 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.

31. The Washington Post (formally, WP Company LLC d/b/a The Washington Post) is a news organization based in Washington, D.C. It publishes a daily print newspaper, a variety of digital and mobile products, and a website, washingtonpost.com, that reached an audience of more than 75 million unique visitors per month in 2017.

Particular Issue To Be Addressed

32. *Amici* are media organizations that publish information or represent the interests of those that do. *Amici* submit the attached brief to aid the Court in reviewing the petition to invoke contempt proceedings filed by the School Board of Broward County (“School Board”).

33. The issue presented in this case—whether the court may invoke contempt proceedings against a newspaper and its reporters based on its publication of lawfully obtained, truthful information that the School Board made available to any member of the public—is of particular concern to journalists as such punishments are an extreme remedy that effectively freeze their ability to do their jobs. Many of the *amici* regularly report on court proceedings and have a direct interest in ensuring that journalists and news organizations remain free from unconstitutional punishments based on their publication of lawfully obtained information of significant public interest.

34. The U.S. Supreme Court has consistently held that the press cannot be punished for publishing or broadcasting truthful information of public concern that the press obtained legally absent a need of the “highest order.” *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 103 (1979), a standard that the Supreme Court has never found to have been met. The proposed *amicus* brief will address both United States Supreme Court and lower court precedent, including that of Florida courts, that has recognized and adopted this axiomatic principle: when a publisher lawfully obtains truthful information about a matter of public concern, the First Amendment protects its right to publish that information. The proposed *amicus* brief will demonstrate that the First Amendment fully protects the Sun Sentinel’s publication of information released by the School Board, which the Sun Sentinel lawfully obtained by merely accessing a document electronically, in the same fashion as any member of the public.

Amici Can Assist in the Disposition of this Case

35. *Amici* can assist this Honorable Court by providing legal argument regarding the First Amendment's protections for publication of truthful information on a matter of public concern that is lawfully obtained. The proposed brief will be valuable to this Court because of *amici's* experience analyzing legal issues that touch on First Amendment rights and because of their direct interests in protecting the freedom of the press. As representatives and members of the news media, the denial of the School Board's petition is of central importance to *amici*.

36. *Amici* understand that *amicus* briefs are unusual in Circuit Court, but they are not unprecedented. *See, e.g. Florida Power & Light Co. v. Albert Letter Studios, Inc.*, 896 So. 2d 891, 895 (Fla. 3d DCA 1984) (noting that an interested party "itself filed an *amicus* brief in the circuit court"). Given the importance of the issues to *amici* and the public in general, *amici* request leave to be heard.

Consent to the Filing of an Amicus Curiae Brief

37. Counsel for *amici* has informed the Sun Sentinel and the School Board via e-mail of *amici's* intent to submit the attached *amicus* brief and requested the Sun Sentinel's and School Board's consent to their participation as *amici*. The Sun Sentinel consents. As of the filing of this Motion, the School Board had not responded to the e-mail from counsel for *amici*.

WHEREFORE, *amici* respectfully request this Court to grant it leave to file the attached *amicus* brief in support of the Sun Sentinel in this matter on August 14, 2018, or such other date as set forth by the Court.

Dated: August 14, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2018, I electronically filed the foregoing document with the Clerk of the Court via the E-portal. I also certify that the foregoing has been furnished via the E-Portal and/or by email to all counsel of record on this date.

/s/ Charles D. Tobin

Attorney

EXHIBIT A

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,
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THE SCHOOL BOARD OF BROWARD
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**BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS AND 30 MEDIA ORGANIZATIONS IN
SUPPORT OF SUN-SENTINEL COMPANY, LLC AND REPORTERS
PAULA MCMAHON AND BRITTANY WALLMAN**

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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, Associated Press Media Editors, Association of Alternative Newsmedia, Bloomberg L.P., Boston Globe Media Partners, LLC, Brechner Center for Freedom of Information, Cable News Network, Inc., CBS Broadcasting Inc., Cox Media Group, Inc., Dow Jones & Company, Inc., The E.W. Scripps Company, Fox Television Stations, LLC, Gannett Co., Inc., Hearst Corporation, Inter American Press Association, Los Angeles Times Communications LLC, The Miami Herald, National Public Radio, Inc., The New York Times Company, News Media Alliance, Nexstar Media Group, Inc., Online News Association, POLITICO LLC, Radio Television Digital News Association, Reporters Without Borders, Society of Professional Journalists, TEGNA Inc., Tully Center for Free Speech, and The Washington Post. A supplemental statement of identity and interest of *amici curiae* is included below as Appendix A.

Amici write to urge this Court to deny the petition by the School Board of Broward County, Florida to initiate contempt proceedings against Sun-Sentinel Company, LLC and reporters Paula McMahon and Brittany Wallman. *Amici* are members of the news media and organizations that advocate on behalf of the press and the public. Many of the *amici* regularly report on court proceedings and have a direct interest in ensuring that journalists and news organizations remain free from unconstitutional punishments based on their publication of lawfully obtained information of significant public interest.

INTRODUCTION AND SUMMARY OF ARGUMENT

On August 3, 2018, the Sun Sentinel published a newsworthy article detailing a consultant’s report commissioned by the Broward County public school system regarding the education of student Nikolas Cruz (“Cruz”), who killed 17 people in the February 14, 2018 shooting at Marjory Stoneman Douglas High School. Pursuant to this Court’s orders,¹ the School Board of Broward County (“School Board”) had earlier that day released the report. Information that the Court directed the School Board to redact before releasing the report, however, remained viewable by any user. The Sun Sentinel downloaded the report from the School District’s website. In its article on the report, the newspaper recounted the consultant’s conclusion that the school system had twice failed to comply with state and federal law governing students with disabilities—information of the utmost public concern, but that was contained within the portions of the report that the Court had ordered the School Board to redact.

Despite its own failure to ensure its adherence to the Court’s directives, and the important lapses the report documented, two days after the Sun Sentinel published the news article, the School Board on August 6, 2018 filed a petition asking the Court to initiate contempt proceedings against the Sun-Sentinel Company, LLC (the “Sun Sentinel”) and reporters Paula McMahon and Brittany Wallman.² In its petition, the School Board alleges that the newspaper intentionally published information in contravention to the Court’s Orders.

¹ The Honorable Patti Henning ordered the report released on July 26, 2018 subject to redactions. Cruz sought review of that decision in the criminal proceeding before the Honorable Elizabeth Scherer, who concurred with Judge Henning and denied Cruz’s request for a protective order on August 3, 2018.

² The petition was filed in two cases currently pending before this Court: civil matter number 18-014554 (24) pending before Judge Henning, and criminal matter number 18001958CF10A pending before Judge Scherer. Sun Sentinel Company is an intervenor in the civil action

The School Board's petition is wholly without merit, and the Court should reject it.³ Holding the Sun Sentinel or its reporters in contempt for publishing information released by the government, publicly available to anyone, and about a matter of the utmost public concern would contravene nearly 80 years of constitutional law. The First Amendment prohibits the punishment of a media outlet for the publication of information lawfully obtained by its journalists on a matter of public concern. *Amici* urge this Court to deny the School Board's petition.

ARGUMENT

I. Punishing the publication of lawfully obtained information on a matter of public concern violates the First Amendment.

The School Board erroneously asks the Court to initiate contempt proceedings against the Sun Sentinel and two of its reporters for having reported to the public lawfully obtained, truthful information contained in records made public by the School Board. Any such proceedings would violate the First Amendment and directly contradict the long line of U.S. Supreme Court jurisprudence that has consistently held that the press cannot be punished for publishing or broadcasting truthful information of public concern that the press obtained legally absent a need of the "highest order," *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 103 (1979), a standard that the Supreme Court has never found to have been met. Time and again, the courts have turned aside

pending before Judge Henning, as are *amici* the Reporters Committee, The Associated Press, Cable News Network, Inc., Dow Jones & Company, Gannett Co., Inc., Los Angeles Times Communications LLC, Nextstar Broadcasting, Inc., The New York Times Company, and TEGNA Inc.

³ In its opposition to the School Board's petition, the Sun Sentinel argues that it cannot be held in contempt because the Court's Orders did not in any manner restrict what the Sun Sentinel could publish about the report. *See* Sun-Sentinel Co.'s Opp'n to Verified Pet. to Invoke Contempt and Mot. to Dismiss Under Florida's Ant-SLAPP Law at 6–8. *Amici* do not address this issue but agree with the Sun Sentinel that it cannot be held in contempt for this reason, in addition to the reasons explained below and in the Sun Sentinel's opposition.

efforts, in both the criminal and civil contexts, to punish or restrain journalists who obtain information handed to them by their sources. For example:

- In *Bartnicki v. Vopper*, 532 U.S. 514, 534 (2001), the Supreme Court held that a radio commentator may not be held liable for damages for broadcasting an audio recording that had been illegally recorded by a third party and later left in a source's mailbox, who in turn provided the tape to the radio commentator.
- In *Florida Star v. B.J.F.*, 491 U.S. 524, 526 (1989), the Supreme Court held that the First Amendment precluded a rape victim from recovering civil damages from a Jacksonville newspaper for the publication of her name when the sheriff's department inadvertently released it in violation of a Florida statute.
- In *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 105–06 (1979), the Supreme Court held that the state may not punish "the truthful publication of an alleged juvenile delinquent's name lawfully obtained by a newspaper" through the newspaper's interviews of eyewitnesses, even though publication of the information violated a West Virginia statute that made it a crime for the newspaper to publish, without the written approval of the juvenile court, the name of any youth charged as a juvenile offender.
- In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975), the Supreme Court held that "[o]nce true information is disclosed in public court documents open to public inspection, the press cannot be sanctioned for publishing it." The Court declared unconstitutional a Georgia statute that made it a crime to publish the name of a rape victim, holding that damages could not be recovered against a newspaper for publishing the name of a rape victim after the reporter obtained the name from a court reporter who provided the reporter with public court records containing the victim's name.
- In *Bridges v. California*, 314 U.S. 252, 265–66, 271 (1941), a California court held the publisher of the *Los Angeles Times* in contempt of court after the newspaper published a source's telegrams commenting on pending court proceedings. The Supreme Court reversed, holding that the First Amendment's protections for freedom of the press "were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society."

Whether in the context of a prior restraint or post-publication punishment, state and appellate courts around the country, including in Florida, have recognized and adopted this axiomatic principle: when a publisher lawfully obtains truthful information about a matter of public concern, the First Amendment protects its right to publish that information. *See Palm*

Beach Newspapers, LLC v. State, 183 So.3d 480, 483 (Fla. 4th DCA 2016) (denying prisoner’s motion to seal transcripts of prisoner’s telephone calls after prosecution provided newspaper with transcripts and newspaper published their contents); *Cape Publ’ns, Inc. v. Hitchner*, 549 So. 2d 1374, 1377–78 (Fla. 1989) (information lawfully obtained by newspaper after child abuse trial was a matter of public concern and thus publication was not an actionable invasion of privacy); *see also Ashcraft v. Conoco Inc.*, 218 F.3d 288, 303 (4th Cir. 2000) (journalist and news organization may not be held in contempt for reporting on sealed court records which a court clerk gave to a journalist unsealed by mistake); *Des Moines Register & Tribune Co. v. Osmundson*, 248 N.W.2d 493, 503 (Iowa 1976) (noting that “[i]nformation which is revealed in public documents is in the public domain” and that the Supreme Court cases “have foreclosed any serious contention that further disclosure of such information can be suppressed before publication or even after publication.” (citation omitted)).

Similarly, the U.S. Supreme Court has recognized that the First Amendment protects the media’s right to publish information it lawfully obtained, even if a news source obtained the material improperly or the trial court generally had the power to restrict dissemination of the information in the first instance. *See Okla. Publ’g Co. v. District Court*, 430 U.S. 308, 311 (1977) (per curiam) (reversing a prior restraint that had prohibited the press from publishing the name of a juvenile defendant, which the journalist had learned by attending a court proceeding, even though courts may generally protect the identity of juveniles); *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (holding that a newspaper cannot be restrained from publishing classified documents that had been obtained by the newspaper’s source without authorization).

II. The Sun Sentinel Lawfully Obtained the Information Released by the Government.

Here, the record is clear that the School Board released the full consultant's report, without appropriately safeguarding the portions that the Court had ordered it to redact. The Sun Sentinel's publication of this information, which it lawfully obtained by merely accessing the document electronically from the School Board's website, in the same fashion as any member of the public, is fully protected by the same fundamental First Amendment principles the courts have applied in the consistent line of cases.

For example, in *Florida Star*, 491 U.S. at 526, a reporter obtained from the Sheriff's Office press room a document containing the name of a sexual assault victim that by law was supposed to be withheld. In *Oklahoma Publishing Co.*, 430 U.S. at 311–12 (per curiam), the trial court mistakenly allowed reporters to attend a juvenile proceeding that was supposed to be closed, and the judge took no other measures to safeguard the juvenile's identity. In *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 832 (1978), an individual illegally leaked to a reporter the name of a judge who was the subject of a disciplinary inquiry that by law was confidential. In *Procter & Gamble Co. v. Bankers' Trust Co.*, 78 F.3d 219, 223 (6th Cir. 1996), a law firm partner mistakenly released to *Business Week* documents that were subject to a confidentiality order in civil litigation. In *In re Charlotte Observer*, 921 F.2d 47, 48–49 (4th Cir. 1990), the name of an attorney who was the target of a grand jury investigation was inadvertently disclosed during an open hearing. And in *Conoco Inc.*, 218 F.3d at 303, a court clerk accidentally provided a reporter with an unsealed envelope containing a confidential settlement agreement.

In each of these cases—as with the Sun Sentinel journalists here—the news media received documents that, by operation of statute, court rule, or confidentiality obligations, the sources were not permitted to release. And in each case, the court held that the journalists

received the information lawfully, and as the information was in the public interest, the First Amendment precluded restraint of the publication or punishment after the fact.

Indeed, the Supreme Court has repeatedly made crystal clear that it is the government's burden to safeguard information – not the news media's burden to refrain from publication – that does not belong in the public domain. When the government fails to fulfill that burden, it cannot punish the press for publishing information provided by the government (even if through inadvertent disclosure):

[W]here the government itself provides information to the media, it is most appropriate to assume that the government had, but failed to utilize, far more limited means of guarding against dissemination than the extreme step of punishing truthful speech. . . .

Where, as here, the government has failed to police itself in disseminating information, it is clear under [our case law] that the imposition of damages against the press for its subsequent publication can hardly be said to be a narrowly tailored means of safeguarding [the governmental interest at stake]. Once the government has placed such information in the public domain, reliance must rest upon the judgment of those who decide what to publish or broadcast

Florida Star, 491 U.S. at 538 (citations omitted) (internal quotation marks omitted).

Accordingly, the Sun Sentinel may not be punished for publishing lawfully obtained, truthful information that the School Board intended, but failed, to keep secret. *Cox Broadcasting*, 420 U.S. at 496; *Okla. Publ'g Co.*, 430 U.S. at 308 (per curiam). The Sun Sentinel unquestionably obtained the information at issue lawfully. It was the School Board's own internal error that resulted in the publication of the consultant's report in its entirety, without effective redaction. Any member of the public—not just the Sun Sentinel—had access to the entire report until the School Board recognized its error. The School Board's position that the Court should punish the journalists is entirely unsupported by, and indeed antithetical to, the law. *See Palm Beach*, 183 So. 3d at 484 (noting that, where government provided newspaper with

transcripts of prisoner’s recorded phone calls, “[t]he remedy for any violation of [the prisoner’s] privacy, if any, lies with the government, rather than the [newspaper’s] right to publish.”).

III. The Information the Sun Sentinel Published—the Record of the School District’s Failures to Adequately Serve Disabled Students—is of the Utmost Public Concern.

Finally, the Sun Sentinel’s reporting is without doubt a matter of public concern. The tragic shooting at Marjory Stoneman Douglas High School is but the latest in the deeply disturbing wave of mass shootings, several occurring at public schools throughout the nation. The incident continues to raise serious issues of school security, weapons safety and regulation, and student mental health.

With this specific tragedy, the consultant’s report may help answer lingering questions regarding how the school district treated Cruz during his years in the public school system.⁴ Indeed, the consultant’s report revealed two instances in which the district failed to comply with regulations governing care for students with disabilities.⁵ Parents, students, teachers, other public education officials—every member of the public—may learn important lessons that could help prevent recurrences of this deeply tragic shooting.

CONCLUSION

As the Sun Sentinel and reporters Paula McMahon and Brittany Wallman lawfully obtained the information released school officials, and the information is of the utmost public concern, the First Amendment prohibits any finding of contempt. For the foregoing reasons,

⁴ See, e.g., *Florida lessons for school safety*, The Seattle Times, Aug. 10, 2018, available at <https://bit.ly/2ntiVFL>; Brianna Sacks, *The Alleged Parkland Gunman Asked School Officials For Special-Needs Help Before The Shooting*, BuzzFeed News, Aug. 5, 2018, available at <https://perma.cc/MKK3-DPKG>.

⁵ Patricia Mazzel, *Parkland Shooting Suspect Lost Special-Needs Help at School When He Needed It Most*, New York Times, Aug. 4, 2018, available at <https://nyti.ms/2ObIUfY>.

amicus curiae respectfully requests that this Court deny the School Board's petition to invoke contempt proceedings against the Sun Sentinel and these journalists.

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 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 assistance 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. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP’s content can reach more than half of the world’s population.

The Associated Press Media Editors is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom leaders; and champions the First Amendment and promotes freedom of information.

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.

Bloomberg L.P. operates Bloomberg News, a 24-hour global news service based in New York with more than 2,400 journalists in more than 150 bureaus around the world. Bloomberg supplies real-time business, financial, and legal news to the more than 319,000 subscribers to the Bloomberg Professional service world-wide and is syndicated to more than 1000 media outlets across more than 60 countries. Bloomberg television is available in more than 340 million homes worldwide and Bloomberg radio is syndicated to 200 radio affiliates nationally. In addition, Bloomberg publishes Bloomberg Businessweek, Bloomberg Markets and Bloomberg Pursuits magazines with a combined circulation of 1.4 million readers and Bloomberg.com and Businessweek.com receive more than 24 million visitors each month. In total, Bloomberg distributes news, information, and commentary to millions of readers and listeners each day, and has published more than one hundred million stories.

Boston Globe Media Partners, LLC publishes The Boston Globe, the largest daily newspaper in New England.

The Brechner Center for Freedom of Information (the “Brechner Center”) at the University of Florida in Gainesville exists to advance understanding, appreciation and support for freedom of information in the state of Florida, the nation and the world. Since its founding in 1977, the Brechner Center has served as a source of academic research and expertise about the law of gathering and sharing information, and the Center regularly appears as a friend-of-the-court in federal and state appellate cases nationwide where the public’s right to informed participation in government is at stake. The Center is exercising the academic freedom of its faculty to express their scholarly views, and is not submitting this brief on behalf of the University of Florida or the University of Florida Board of Trustees.

Cable News Network, Inc. (“CNN”), a Delaware corporation, is a wholly owned subsidiary of Turner Broadcasting System, Inc., which is ultimately a wholly-owned subsidiary of AT&T Inc., a publicly traded company. CNN is a portfolio of two dozen news and information services across cable, satellite, radio, wireless devices and the Internet in more than 200 countries and territories worldwide. Domestically, CNN reaches more individuals on television, the web and mobile devices than any other cable TV news organization in the United States; internationally, CNN is the most widely distributed news channel reaching more than 271 million households abroad; and CNN Digital is a top network for online news, mobile news and social media. Additionally, CNN Newsource is the world’s most extensively utilized news service partnering with hundreds of local and international news organizations around the world.

CBS Broadcasting Inc., on behalf of WFOR-TV and CBS News. WFOR-TV provides broadcast and online coverage of news about Miami-Dade, Broward and Monroe counties. CBS News produces morning, evening and weekend news programming, as well as news and public affairs newsmagazine shows, such as “60 Minutes” and “48 Hours.”

Cox Media Group, Inc. is an integrated broadcasting, publishing, direct marketing and digital media company. Its operations include 15 broadcast television stations, a local cable channel, a leading direct marketing company, 85 radio stations, eight daily newspapers and more than a dozen non-daily print publications and more than 100 digital services.

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, including in West Palm Beach (WFTS), Ft. Myers (WFTX), and Tampa (WFTS). 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.

Directly and through affiliated companies, **Fox Television Stations, LLC**, owns and operates 28 local television stations throughout the United States. The 28 stations have a collective market reach of 37 percent of U.S. households. Each of the 28 stations also operates Internet websites offering news and information for its local market.

Gannett Co., Inc. is a leading news and information company which publishes USA TODAY and more than 100 local media properties. Each month more than 110 unique visitors access content from USA TODAY and Gannett's local media organizations, putting the company squarely in the Top 10 U.S. news and information category.

Hearst Corporation is one of the nation's largest diversified media, information and services companies with more than 360 businesses. Its major interests include ownership of 15 daily and more than 30 weekly newspapers, including the San Francisco Chronicle, Houston Chronicle, and Albany Times Union; hundreds of magazines around the world, including Cosmopolitan, Good Housekeeping, ELLE, Harper's BAZAAR and O, The Oprah Magazine; 31 television stations, including Orlando, FL station WESH-TV and West Palm Beach, FL station WPBF-TV, which reach a combined 19 percent of U.S. viewers; ownership in leading cable television networks such as A&E, HISTORY, Lifetime and ESPN; global ratings agency Fitch Group; Hearst Health; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

The Inter American Press Association (IAPA) is a not-for-profit organization dedicated to the defense and promotion of freedom of the press and of expression in the Americas. It is made up of more than 1,300 publications from throughout the Western Hemisphere and is based in Miami, Florida.

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

The Miami Herald is a daily newspaper published by the McClatchy Company.

National Public Radio, Inc. (NPR) is an award-winning producer and distributor of noncommercial news, information, and cultural programming. A privately supported, not-for-profit membership organization, NPR serves an audience of 30 million people who listen to NPR

programming and newscasts each week via more than 1000 noncommercial, independently operated radio stations, licensed to more than 260 NPR Members and numerous other NPR-affiliated entities. In addition, NPR is reaching an expanding audience via its digital properties, including podcasts (which see about 19 million unique users each month), social media, mobile applications, and NPR.org (which sees about 37 million unique visitors each month).

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 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.

Nexstar Media Group, Inc. ("Nexstar") is a leading diversified media company that leverages localism to bring new services and value to consumers and advertisers through its traditional media, digital and mobile media platforms. Nexstar owns, operates, programs or provides sales and other services to 169 television stations and related digital multicast signals reaching 100 markets or approximately 39% of all U.S. television households. Nexstar Media Group, Inc. is the parent company of Nexstar Broadcasting, Inc., the licensee of television stations WFLA and WTTA in Tampa, Florida.

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.

POLITICO is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to more than 350 reporters, editors and producers. It distributes 30,000 copies of its Washington newspaper on each publishing day, publishes POLITICO Magazine, with a circulation of 33,000 six times a year, and maintains a U.S. website with an average of 26 million unique visitors per month. Politico also publishes numerous newsletters, including four dedicated to Florida.

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.

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.

TEGNA Inc. owns or services (through shared service agreements or other similar agreements) 46 television stations in 38 markets. TEGNA owns/operates WTSP-TV in Tampa, Florida (CBS) and WTLV (NBC) and WJXX (ABC) in Jacksonville, Florida.

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.

The Washington Post (formally, WP Company LLC d/b/a The Washington Post) is a news organization based in Washington, D.C. It publishes a daily print newspaper, a variety of digital and mobile products, and a website, washingtonpost.com, that reached an audience of more than 75 million unique visitors per month in 2017.