Nos. 13-5574, 13-5592

IN THE

Supreme Court of the United States

MARTIN JOHNSON, *Petitioner*,
v.
STATE OF NEW YORK, *Respondents*.

ANDREW MOSS, *Petitioner*,
v.
STATE OF NEW YORK, *Respondents*.

ON PETITION FOR WRIT OF CERTIORARI TO THE
NEW YORK COURT OF APPEALS

BRIEF *AMICI CURIAE* OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 26 NEWS MEDIA ORGANIZATIONS IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST[1]

Reporters often 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 function of the courts – especially information as vital to the integrity of the criminal justice system as witness testimony. This case concerns an issue critical to the media specifically and the public in general: whether a court may exclude the public from a trial without a particularized consideration of any alternatives and without identifying a specific, overriding interest that overcomes the presumption of public access to the courts.

Amici are The Reporters Committee for Freedom of the Press, Advance Publications, Inc., American Society of News Editors, The Associated Press, Atlantic Media, Inc., Bay Area News Group, Bloomberg L.P., Courthouse News Service, The Daily Beast Company LLC, Dow Jones & Company, Inc., First Amendment Coalition, LIN Media, The McClatchy Company, The National Press Club, National Press Photographers Association, National

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[1] Pursuant to Sup. Ct. R. 37, counsel for the *amici curiae* The Reporters Committee for Freedom of the Press, *et al.* declare that they authored this brief in total with no assistance from the parties; that no individuals or organizations other than the *amicus* made a monetary contribution to the preparation and submission of this brief; that counsel for all parties were given timely notice of the intent to file this brief; and that written consent of all parties to the filing of the brief *amici curiae* has been filed with the Clerk.

Public Radio, Inc., The New York Times Company, The New Yorker, Newspaper Association of America, The Newspaper Guild - CWA, North Jersey Media Group Inc., NYP Holdings, Inc., Radio Television Digital News Association, Reuters America LLC, Society of Professional Journalists, The Washington Post, and WNET.

Amici are described more fully in Appendix A.

SUMMARY OF ARGUMENT

Amici urge this Court to accept review in order to preserve important First Amendment rights of public access to criminal trials in New York. This Court has repeatedly held that the right of public access to criminal trials can only be overcome by a specific showing of harm made on the record. New York's highest court has undercut the requirements of this Court's holdings.

In this case, a New York Supreme Court judge closed a courtroom for the testimony of an undercover police officer during the trial of Petitioner Martin Johnson on drug charges.[2] Pet. App. at 4. The trial judge closed the courtroom to everyone except Johnson's family without any on-the-record

[2]Although this brief describes the facts surrounding the Martin Johnson case, *amici* also urge this Court to consider the public's interest and grant review in the related Petition of Andrew Moss, which is based on the same New York Court of Appeals opinion. *See generally* Petition for Writ of Certiorari, *Andrew Moss v. New York*, No. 13-5592 (U.S. July 26, 2013).

consideration of alternatives to closure, leaving the testimony of the undercover drug officer completely removed from public scrutiny. *Id.* at 6. On appeal, the New York Court of Appeals held that no such consideration must be made on the record. "[I]t can be implied," according to the appeals court, "that the trial court, in ordering closure, determined that no lesser alternative would protect the articulated interest." *People v. Echevarria*, 21 N.Y.3d 1, 18–19 (2013). This ruling came over the dissent of Chief Judge Lippman, who observed that the ruling "eviscerates the substance" of this Court's precedent. *Id.* at 22.

Petitioner has argued that the New York Court of Appeals misapplied this Court's holdings in *Waller v. Georgia*, 467 U.S. 39 (1984), and *Presley v. Georgia*, 558 U.S. 209 (2010). *Amici* write to emphasize the strong public interest warranting the granting of certiorari based on the First Amendment. While a criminal defendant has a Sixth Amendment right to a public trial, the public enjoys a right of access to criminal trials under the First Amendment. *See, e.g.*, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 584–85 (1980) (Brennan, J., concurring) (observing that the First Amendment "secures the public an *independent* right of access to trial proceedings").

This right of the public "may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Waller*, 467 U.S. at 45. The decision below ignores this Court's

substantial directives in this area, and *amici* urge the Court to accept review to reiterate that courtrooms may not be closed in criminal trials unless the party seeking closure makes a particularized showing of harm and the trial judge undertakes an on-the-record analysis of less restrictive alternatives to closure.

ARGUMENT

I. Review is necessary to preserve the robust First Amendment right of public access to criminal trials that this Court has long recognized.

There is a First Amendment right of public access to criminal trials. *See, e.g.*, *Richmond Newspapers*, 448 U.S. at 580. This right finds its roots in the need of the American people to hold their government, including the courts, accountable. And the interest is even more profound in areas that are the subject of important public discussion and debate, such as drug policy. It is only through transparency that the people can learn public policy is formed and executed.

A. The public interest in observing the criminal justice process is significant.

The public has an overwhelming interest in knowing how its courts operate. Attorney General Eric Holder made clear just last month how issues like those at the heart of this case — how drug crimes are prosecuted — have a profound influence on public policy. His announcement that the government would ease the sentencing burdens on some offenders could well mark the end of a decades-long federal program of "zero tolerance" for drug crimes that has led to what some consider an incarceration crisis. *See* David G. Savage, *'Mandatory Minimum' Sentences to End for Many Drug Offenders*, L.A. Times, Aug. 11, 2013, available at http://lat.ms/13TN2sx. The proposed change has defenders and critics on both sides of the political

spectrum. *See* Mary Rhodan, *Right and Left Praise Eric Holder's Drug-Sentencing Plan, Up to a Point*, Time Magazine, Swampland Blog, Aug. 13, 2013, *available at* http://ti.me/16dYvDG. And of course this is not unique to the federal system; many states started to grapple with the issues of enforcement and alleged over-incarceration decades ago. *See, e.g.*, N.C. Aizenman, *New High in U.S. Prison Numbers*, Wash. Post, Feb. 29, 2008, at A1, available at http://wapo.st/mUhRp; Gary Fields & Nathan Koppel, *States Seek Prison Breaks*, Wall St. J., Feb. 8, 2011, available at http://on.wsj.com/dZHhPb. It does not matter for purposes of a legal discussion on access rights which side has the better arguments. Instead, *amici* simply note that the very discussion, which has led to 2.3 million people in jail in America and a still-contested debate over whether it works at all in reducing crime, *see* John Tierney, *For Lesser Crimes, Rethinking Life Behind Bars*, N.Y. Times, Dec. 12, 2012, at A1, available at http://nyti.ms/UTJFuH, requires a broad array of information to fuel a meaningful debate, and thus demands transparency in criminal drug trials.

There are critics who believe the criminal justice system is too soft on crime, while others believe that sentences are too lenient. Some may think officers may let race influence whom they stop and arrest, and others may believe officers do not get enough support for a very dangerous job. Transparency informs the debate and lets the public form its own opinions on how the system operates, while secrecy contributes to an atmosphere of mistrust based on disputed facts and biases. Letting the public hear

the testimony of arresting officers is critical and should only be overcome in the narrowest of circumstances.

The media's role as a proxy for the public in effective this transparency is significant. As Justice Powell has pointed out in a case involving media access to prisons:

> An informed public depends on accurate and effective reporting by the news media. No individual can obtain for himself the information needed for the intelligent discharge of his political responsibilities. For most citizens the prospect of personal familiarity with newsworthy events is hopelessly unrealistic. In seeking out the news the press therefore acts as an agent of the public at large. It is the means by which the people receive that free flow of information and ideas essential to intelligent self-government. By enabling the public to assert meaningful control over the political process, the press performs a crucial function in effecting the societal purpose of the First Amendment.

Saxbe v. Washington Post Co., 417 U.S. 843, 863 (1974).

There are many considerations that might influence a court's decision on whether to limit public access to an officer's testimony: who is present, what will be disclosed, and how public accountability can be

preserved and promoted while also accommodating the safety concerns of officers working in violent surroundings. However that balance is achieved, one thing is clear. The public interest cannot be served by allowing *routine* courtroom closures.

Even if this appeal did not involve such matters of public concern as drug convictions and sentencing, the access issue is still critically important. Courts should never be allowed to ease a constitutionally mandated access standard to the point where closures become routine. Any witness's testimony can be greatly affected by the knowledge that there will be no public accountability. *See Waller*, 467 U.S. at 46 ("[A] public trial encourages witnesses to come forward and discourages perjury."). Most cases involve conflicting testimony by witnesses. Letting the public view that testimony has a positive effect on witness candor and allowing it to be given in a closed courtroom can alleviate the pressure to be as honest as possible. Openness therefore must not be merely the starting presumption but the rule, with a narrow exception for demonstrated need to support a compelling interest when there are no alternatives to closure.

B. This Court has recognized a constitutional right of access because of the important public interest in judicial transparency.

Public access to criminal trials dates to the early days of the American legal system. "[T]he historical evidence demonstrates conclusively that at the time when our organic laws were adopted, criminal trials both here and in England had long been presumptively open." *Richmond*

Newspapers, Inc. v. Virginia, 448 U.S at 569. "From this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past," the presumption of public access "inheres in the very nature of a criminal trial under our system of justice." *Id.* at 573.

While petitioners draw upon the *Richmond Newspapers* and *Press-Enterprise* line of cases, which relies on the First Amendment, in combination with *Waller*, which relies on the Sixth Amendment, *amici* here are primarily concerned with vindicating the public's right of access and emphasizing how those interests complement and clarify the accused's interest in a public trial.

By ensuring this right of public access, "the First Amendment serves to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604 (1982) (citations omitted). "Thus to the extent that the First Amendment embraces a right of access to criminal trials, it is to ensure that this constitutionally protected discussion of governmental affairs is an informed one." *Id.* at 604–05. And this Court has said that as a "general rule," "judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings." *Waller*, 467 U.S. at 46 n.4.

While this First Amendment right is not absolute, it is also not to be abridged lightly. "The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could, as it was

here, be foreclosed arbitrarily." *Richmond Newspapers*, 448 U.S. at 576–77. This Court has mandated that closure be "limited" and that if a state seeks to "deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *Globe Newspaper Co.*, 457 U.S. at 606–07 (quoting *Richmond Newspapers*, 448 U.S. at 581). In *Press-Enterprise I*, this Court further elaborated on what is necessary to overcome the right, requiring "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise v. Superior Court*, 464 U.S. 501, 510 (1984) ("*Press-Enterprise I*"). The interest in closure must be accompanied by "findings specific enough that a reviewing court can determine whether the closure order was properly entered." *Id.* This Court has established a high bar to overcoming the right, one that has not been cleared here.

II. This Court should accept review to affirm that the constitutional right of public access can only be overcome by meeting exacting standards.

It was under the framework created under *Globe Newspapers* and *Press-Enterprise*, *supra*, that this Court, in *Waller*, held that a party "seeking [courtroom closure] must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to

closing the proceeding, and it must make findings adequate to support the closure." *Waller*, 467 U.S. at 48. The *Waller* Court applied the public's right of access from *Press-Enterprise I* to Sixth Amendment claims by the accused, observing "that the explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and public." *Waller*, 467 U.S. 39 at 46. *Waller* recognized the benefit to the accused of a public trial, so that "public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions." *Id.*

This Court followed the *Waller* rule in *Presley v. Georgia* and clarified that the public's First Amendment interest and the accused's Sixth Amendment interest in a public trial are very similar, if not congruent. *See Presley*, 558 U.S. at 212–13. The *Presley* holding demonstrates that the First and Sixth Amendments form a unified body of law on public qualities of a trial, and that the public's right of access is comparable to the accused's. *See id.* Accordingly, "[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials." *Presley*, 558 U.S. at 215.

While the right to a public trial "may give way in certain cases to other rights or interests . . . [s]uch circumstances will be rare, however, and the balance of interests must be struck with special care." *Waller*, 467 U.S. at 44; *Presley*, 558 U.S. at 213; *see*

also Press-Enterprise I, 464 U.S. at 509 ("Closed proceedings, although not absolutely precluded, *must be rare* and only for cause shown that outweighs the value of openness." (emphasis added)).

By excluding the public from a criminal trial without meeting the exacting standards set forth by these cases, a trial court harms not just the Sixth Amendment rights of the accused but the First Amendment rights of the public. "The Court has further held that the public trial right extends beyond the accused and can be invoked under the First Amendment." *Presley*, 558 U.S. 212. Although the defendant here has asserted his right to a public trial, it is important that a trial court consider in all cases the "independent public interest in an open courtroom." *Tinsley v. United States*, 868 A.2d 867, 879 (D.C. 2005). As this Court has observed, "[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers*, 448 U.S., at 572.

A. A particularized showing of harm is necessary.

Under the First and Sixth amendments, this Court has held that "individualized determinations are *always* required before the right of access may be denied: 'Absent an overriding interest *articulated in findings*, the trial of a criminal case must be open to the public.'" *Globe Newspaper Co.*, 457 U.S. at 608 n.20. The *Waller* Court applied this, ordering new proceedings because "the trial court's findings were broad and general." *Waller*, 467 U.S. at 48.

Below, the officers in Johnson's hearing testified that they attempt to conceal their identities as police officers; they have faced threats because of their police work; they have done work in pending cases; they had purchased drugs undercover from suspects who were not eventually arrested; and they had planned to return in the future to the "vicinity" where Johnson had been arrested. Pet. App at 8. These concerns are obviously important and reflect the ongoing nature of dangerous undercover police work, but they do not demonstrate particularized risks associated with Johnson's case.

These assertions must be weighed against the First Amendment presumption of access to criminal proceedings. "The First Amendment right of access cannot be overcome by the conclusory assertion that [a public proceeding] might deprive the defendant" of a right to a fair trial. *Press-Enterprise v. Superior Court*, 478 U.S. 1, 15 (1986) ("*Press-Enterprise II*"). In the jury-selection context, for example, a "generic risk" of prejudice, "unsubstantiated by any threat or incident, is inherent whenever members of the public are present during the selection of jurors." *Presley*, 558 U.S. at 215. But these generic risks do not mandate closure. "If broad concerns of this sort were sufficient to override a defendant's constitutional right to a public trial, a court could exclude the public from jury selection almost as a matter of course." *Id.* By contrast, "these determinations must be covered by specific, individualized findings articulated on the record before closure is effected." *United States v. Antar*, 38 F.3d 1348, 1359 (3d Cir. 1994).

Without adhering to the requirement of a particularized showing of harm, New York trial courts risk completely ignoring the balancing tests required by *Waller* and *Presley*, and turning courtroom closure into a standard practice. In his dissent below, Chief Justice Lippman warned of "the threat of" courtroom closures where undercover officers are testifying "becoming routine, if not the rule." *Echevarria*, 21 N.Y.3d at 25–26. Because of this, "it is all the more important to ensure that all steps articulated by *Presley* are undertaken with the requisite *particularity* and gravity appropriate to safeguard defendants' rights." *Id.* at 26 (emphasis added). If the general rule endorses secrecy, then it will inherently protect too much and ignore the constitutional rights at stake.

B. On-the-record consideration of alternatives to courtroom closures is required.

The trial court erred here by not explicitly considering alternatives to closure. And on appeal, the New York Court of Appeals also erred in its majority holding that, in a "buy-and-bust" case involving the testimony of an undercover police officer, "it can be implied that the trial court, in ordering closure, determined that no lesser alternative would protect the articulated interest." *Echevarria*, 21 N.Y.3d at 18–19. Regarding *Presley*, the Court of Appeals said "it nowhere states that it is incumbent on trial courts, regardless of the circumstances, to engage in a verbal on-the-record review of all potential alternatives before opting for a limited closure." *Echevarria*, 21 N.Y.3d at 18. Instead, the Court of Appeals preserved

an earlier ruling in *Ramos*, holding that "the record in a given buy-and-bust case may support the conclusion that the trial judge impliedly considered alternatives before closing the courtroom." *Id.* at 18; *see also People v. Ramos*, 90 N.Y.2d 490, 504 (1997) ("[I]t can be implied that the trial court, in ordering closure, determined that no lesser alternative would protect the articulated interest[.]").

This conclusion is in stark contrast to *Waller* and *Presley*. In the former, the trial court "did not consider alternatives to immediate closure of the entire hearing," which was the root of the constitutional violation. *Waller*, 467 U.S. at 48. In *Presley*, "it was still incumbent upon [the trial court] to consider all reasonable alternatives to closure." *Presley*, 558 U.S. at 216. This was the dispositive issue in the case. *See id.* ("[The trial court] did not, and that is all this Court needs to decide.").

The *Presley* Court held that "[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials." *Presley,* 558 U.S. at 214. In that particular case, "[n]othing *in the record* show[ed] that the trial court could not have accommodated the public at Presley's trial. *Id.* (emphasis added). This analysis of what is known in the record is telling, as allowing a trial court to "impliedly" consider alternatives to closure leaves no record.[3] Therefore, as Chief Judge Lippman noted

[3] The *Presley* Court went as far as to consider those possible alternatives on the record, as the trial court did not. *See* Presley, 558 U.S. at 214–15 ("Without knowing the precise circumstances, some possibilities include reserving one or more rows

in dissent, "there is no way to know whether any alternatives were actually considered, or whether the courtroom was closed as a matter of course, once safety concerns were implicated by the officers' testimony." *Echevarria*, 21 N.Y.3d at 24.

The majority holding, as the dissent below said, "eviscerates the substance of Presley." *Id.* at 22. And while the majority professed to confine its ruling to the third *Waller* factor, the "implied" consideration of alternatives to closure ignores the fourth *Waller* factor that a trial court "must make findings adequate to support the closure." *Waller*, 467 U.S. at 48.

Implied findings are not findings, and they are certainly not given explicitly enough to allow for meaningful appellate review. *See Press-Enterprise I*, 464 U.S. at 510 ("The interest [in closure] is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered."). "It is to state the obvious that Presley does not contemplate an unreviewable, purely contemplative exercise in satisfaction of a trial court's obligation to consider reasonable alternatives to court closure." *Echevarria*, 21 N.Y.3d at 23 (Lippman, C.J., dissenting) ("The constitutional presumption is that criminal trials are to be open to the

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for the public; dividing the jury venire panel to reduce courtroom congestion; or instructing prospective jurors not to engage or interact with audience members.").

public. If that presumption is to be overcome, it cannot be by implication, otherwise a reviewing court cannot ascertain that the closure is essential.").

The quirks of New York State's buy-and-bust jurisprudence do not trump the important constitutional rights explained by the line of cases from *Press-Enterprise I* to *Waller* and *Presley*. *See Echevarria*, 21 N.Y.3d at 25 ("Without any further findings explained on the record, the closure itself remains without the constitutionally requisite justification.") (Lippman, C.J., dissenting). The First Amendment, as well as the Sixth, gives a trial court the obligation to preserve the public's interest by explicitly considering less restrictive alternatives to a total courtroom closure. By allowing "implied" consideration of these alternatives to pass constitutional muster, the majority below gives New York State trial courts the power to do nothing and still satisfy the exacting closure requirements of this Court's holdings.

CONCLUSION

For the foregoing reasons, this court should accept review and reverse the decision of the New York Court of Appeals.

Respectfully submitted,

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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.

Advance Publications, Inc., directly and through its subsidiaries, publishes 18 magazines with nationwide circulation, newspapers in over 20 cities and weekly business journals in over 40 cities throughout the United States. It also owns many Internet sites and has interests in cable systems serving over 2.3 million subscribers.

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.

Atlantic Media, Inc. is a privately held, integrated media company that publishes *The Atlantic*, *National Journal*, *Quartz* and *Government Executive*. These award-winning titles address topics in national and international affairs, business, culture, technology and related areas, as well as cover political and public policy issues at federal, state and local levels. *The Atlantic* was founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others.

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.

Bloomberg L.P., based in New York City, operates Bloomberg News, which is comprised of more than

1,500 professionals in 145 bureaus around the world. Bloomberg News publishes more than 6,000 news stories each day, and The Bloomberg Professional Service maintains an archive of more than 15 million stories and multimedia reports and a photo library comprised of more than 290,000 images. Bloomberg News also operates as a wire service, syndicating news and data to over 450 newspapers worldwide with a combined circulation of 80 million people in more than 160 countries. Bloomberg News operates the following: cable and satellite television news channels broadcasting worldwide; WBBR, a 24-hour business news radio station that syndicates reports to more than 840 radio stations worldwide; *Bloomberg Markets* and *Bloomberg Businessweek* magazines; and Bloomberg.com, which receives 3.5 million individual user visits each month.

Courthouse News Service is a California-based legal news service for lawyers and the news media that focuses on court coverage throughout the nation, reporting on matters raised in trial courts and courts of appeal up to and including the U.S. Supreme Court.

The Daily Beast was founded in 2008 as the vision of Tina Brown and IAC Chairman Barry Diller. Curated to avoid information overload, the site is dedicated to breaking news and sharp commentary. Tina Brown, former editor of Tatler, Vanity Fair, The New Yorker & Talk, author of the 2007 NY Times best-seller The Diana Chronicles and founder of the annual Women in the World summit, serves as editor-in-chief of the site which regularly attracts over 16

million unique online visitors a month and is the winner of two consecutive Webby awards for 'best news' site.

Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of *The Wall Street Journal*, *Barron's*, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with 2,000 journalists in more than fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

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.

LIN Television Corporation d/b/a LIN Media, along with its subsidiaries, is a local multimedia company that owns, operates or services 43 network-affiliated broadcast television stations, interactive television stations and niche websites and mobile platforms in 23 U.S. markets, including properties in Portland, Ore., Buffalo, N.Y., and New Haven, Conn.

The McClatchy Company, through its affiliates, is the third-largest newspaper publisher in the United States with 30 daily newspapers and related websites as well as numerous community newspapers and niche publications.

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.

National Public Radio, Inc. is an award-winning producer and distributor of noncommercial news programming. A privately supported, not-for-profit membership organization, NPR serves a growing audience of more than 26 million listeners each week by providing news programming to 285 member stations that

are independently operated, noncommercial public radio stations. In addition, NPR provides original online content and audio streaming of its news programming. NPR.org offers hourly newscasts, special features and 10 years of archived audio and information.

The New York Times Company is the publisher of *The New York Times*, *The Boston Globe*, and *International Herald Tribune* and operates such leading news websites as nytimes.com and bostonglobe.com.

The New Yorker is an award-winning magazine, published weekly in print, digital, and online. Its writers, including Jane Mayer, David Grann, and Raffi Khatchadourian, regularly use information gained from federal and state freedom of information laws to report on matters of state, national, and international importance.

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.

The Newspaper Guild – CWA is a labor organization representing more than 30,000 employees of

newspapers, newsmagazines, news services and related media enterprises. Guild representation comprises, in the main, the advertising, business, circulation, editorial, maintenance and related departments of these media outlets. The Newspaper Guild is a sector of the Communications Workers of America. CWA is America's largest communications and media union, representing over 700,000 men and women in both private and public sectors.

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.

NYP Holdings, Inc., a News Corporation company, is the publisher of the New York Post, the oldest continuously published daily newspaper in the United States.

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.

Reuters, the world's largest international news agency, is a leading provider of real-time multi-media news and information services to newspapers, television and cable networks, radio stations and websites around the world. Through Reuters.com, affiliated websites and multiple online and mobile platforms, more than a billion professionals, news organizations and consumers rely on Reuters every day. Its text newswires provide newsrooms with source material and ready-to-publish news stories in twenty languages and, through Reuters Pictures and Video, global video content and up to 1,600 photographs a day covering international news, sports, entertainment, and business. In addition, Reuters publishes authoritative and unbiased market data and intelligence to business and finance consumers, including investment banking and private equity professionals.

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.

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

WNET is the parent company of THIRTEEN, WLIW21, Interactive Engagement Group and Creative News Group and the producer of approximately one-third of all primetime programming seen on PBS nationwide. Locally, WNET serves the entire New York City metropolitan area with unique on-air and online productions and innovative educational and cultural projects. Approximately five million viewers tune in to THIRTEEN and WLIW21 each month.

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