

**No. 20-1632**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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PHILADELPHIA BAIL FUND,

*Plaintiff-Appellee*

v.

Arraignment Court Magistrate Judges FRANCIS BERNARD, SHEILA  
BEDFORD, KEVIN DEVLIN, JAMES O'BRIEN, CATERIA MCCABE,  
ROBERT STACK, in their Official Capacities; President Judge PATRICK  
DUGAN, in his Official Capacity,

*Defendants-Appellants,*

SHERIFF OF PHILADELPHIA ROCHELLE BILAL,

*Defendant.*

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On Appeal from the United States District Court for the Eastern District of  
Pennsylvania  
Case No. 19-3110 (Hon. Harvey Bartle, III)

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**BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS AND 14 MEDIA ORGANIZATIONS IN  
SUPPORT OF PLAINTIFF-APPELLEE**

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[Caption continued on next page]

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

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

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

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

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*In re Globe Newspaper Co.*, 729 F.2d 47 (1st Cir. 1984) .....7, 8, 11

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*United States v. Criden*, 675 F.2d 550 (3d Cir. 1982).....passim

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*United States v. Thomas*, 905 F.3d 276 (3d Cir. 2018) .....6, 7, 13

**Other Authorities**

Adam L. Penenberg, *NYU Journalism Handbook for Students*,  
<https://journalism.nyu.edu/wp-content/uploads/document-nyu-journalism-handbook-for-students.pdf> .....14

Casey Tolan, *Making Freedom Free*, Slate (Mar. 29, 2017),  
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Dan Adler, “*I’m Still in Shock Right Now*”: *Meek Mill on His Probation Win and Onerous Legal Odyssey*, Vanity Fair (Aug. 1, 2019), <https://perma.cc/Q89N-L8ZR> .....13

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

Amici curiae are the Reporters Committee for Freedom of the Press, Atlantic Media, Inc., Gannett Co., Inc., International Documentary Association, Investigative Reporting Workshop at American University, Investigative Studios, The Media Institute, MPA—The Association of Magazine Media, The News Leaders Association, Online News Association, Pennsylvania NewsMedia Association, POLITICO LLC, Society of Environmental Journalists, Society of Professional Journalists, and the Tully Center for Free Speech. A supplemental statement of identity and interest of amici curiae is included as Appendix A.

Amici are members of the news media and organizations that advocate on behalf of the First Amendment rights 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 restrictions on their ability to do so. Amici have a strong interest in ensuring that state and local laws, rules, and practices of courts are consistent with the First Amendment-protected rights of journalists to attend, observe, and report on judicial proceedings.



**SOURCE OF AUTHORITY TO FILE**

Counsel for Plaintiff-Appellee and Defendant Sheriff of Philadelphia

Rochelle Bilal have consented to the filing of this brief. Counsel for Defendants-Appellants stated that his clients do not object to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

**FED. R. APP. P. 29(a)(4)(E) STATEMENT**

Amici state that:

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

## **SUMMARY OF ARGUMENT**

Plaintiff-Appellee Philadelphia Bail Fund (“Plaintiff-Appellee”)<sup>1</sup> challenged the constitutionality of portions of two Pennsylvania court rules and one Philadelphia Municipal Court Arraignment Court Magistrate rule that prohibit the general public, including members of the news media, from making audio recordings of proceedings that take place in courts of no record, such as bail hearings, in Philadelphia Municipal Court. The district court granted summary judgment for Plaintiff-Appellee, holding that, in the absence of an official transcript or audio recording of bail hearings, the rules are unconstitutional insofar as they prohibit members of the public, including Plaintiff-Appellee, from creating audio recordings of bail hearings. Defendants-Appellants Philadelphia Municipal Court Arraignment Court Magistrate Judges Francis Bernard, Sheila Bedford, Kevin Devlin, James O’Brien, Cateria McCabe, Robert Stack, and Philadelphia Municipal Court President Judge Patrick Dugan appeal.

Amici write to highlight the deleterious effect of the court rules at issue on members of the news media, specifically. Amici agree with the district court and with Plaintiff-Appellee that the restrictions imposed by these rules violate the First Amendment by abridging the public’s right of access to judicial proceedings. As

<sup>1</sup> Merry Reed was voluntarily dismissed as a plaintiff in December 2019, leaving Philadelphia Bail Fund as the only remaining Plaintiff-Appellee.

the district court held, the First Amendment provides a presumptive right of access to bail hearings. In the absence of an official transcript or recording, the challenged rules prohibiting journalists from recording bail hearings impermissibly burden their ability to report about such judicial proceedings for the benefit of the public at large. For the reasons set forth herein, amici urge the Court to affirm the district court's grant of summary judgment in favor of Plaintiff-Appellee.

## **ARGUMENT**

### **I. The First Amendment right of access to court proceedings extends to bail hearings.**

The district court correctly recognized that the qualified First Amendment right of the public to attend and observe criminal proceedings extends to bail hearings. JA 018.

The Supreme Court has held that the First Amendment guarantees the public and the press a qualified right to attend criminal trials, *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 603 (1982) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 558–81 (1980) (plurality opinion)), and certain pretrial criminal proceedings, *Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1, 9 (1986) (“*Press-Enterprise II*”) (finding a First Amendment right of access to preliminary hearings as conducted in California). This Court has found that the First Amendment guarantees the public and the press a qualified right to attend other criminal proceedings as well. *See, e.g., United States v. Thomas*, 905 F.3d 276,

282 (3d Cir. 2018) (plea hearings); *United States v. Simone*, 14 F.3d 833, 840 (3d Cir. 1994) (post-trial hearings to investigate jury misconduct). In *United States v. Criden*, this Court held that the First Amendment presumption of access extends to certain pretrial hearings in criminal cases. 675 F.2d 550, 557 (3d Cir. 1982).

In determining whether the First Amendment right of access applies to a particular judicial proceeding, courts look to “two complementary considerations.” *Press-Enterprise II*, 478 U.S. at 8–9. The first consideration, “experience,” concerns whether the proceeding is of a kind that has “historically been open to the press and general public.” *Id.* The second, “logic,” concerns whether “public access plays a significant positive role in the functioning of the particular process in question.” *Id.*; *see also Thomas*, 905 F.3d at 282 (holding that both experience and logic support a First Amendment right of access to plea hearings).

Although this Court has not considered whether the First Amendment right of access extends to bail hearings, specifically, both the U.S. Courts of Appeals for the First and Fifth Circuits have held that it does. *In re Globe Newspaper Co.*, 729 F.2d 47, 51–52 (1st Cir. 1984); *United States v. Chagra*, 701 F.2d 354, 363–64 (5th Cir. 1983). Relying on this Court’s reasoning in *Criden*, the Fifth Circuit concluded that “the same societal interests . . . that mandated a [F]irst [A]mendment right of access to criminal trials in *Richmond Newspapers* apply’ to . . . bail reduction hearings.” *Chagra*, 729 F.2d at 363–64 (citing *Criden*, 675 F.2d

at 557). The First Circuit embraced this same reasoning in *In re Globe Newspaper Co.* when it held that the First Amendment right of access extends to bail proceedings. 729 F.2d at 51–52 (citing *Chagra*, 701 F.2d at 362).

Experience, as interpreted by this Court, supports a finding that the First Amendment right of access applies to bail hearings. This Court considers whether “experience” supports a finding of openness by conducting a “wide-ranging inquiry into historical practice” to determine whether a particular type of proceeding has historically been open. *PG Pub. Co. v. Aichele*, 705 F.3d 91, 108–09 (3d Cir. 2013). In the criminal context, this Court has stated that “relatively little history is required” to find the experience prong satisfied. *N. Jersey Media Group v. Ashcroft*, 308 F.3d 198, 213 (3d Cir. 2002). Moreover, in *Delaware Coalition for Open Government, Inc. v. Strine*, this Court noted that “[i]n prior public access cases we have defined the type of proceeding broadly” when analyzing the First Amendment right of access. 733 F.3d 510, 515 (3d Cir. 2013) (citing *PG Pub. Co.*, 705 F.3d at 109 (analyzing “not just the act of voting, but also the act of entering the polling place and signing in to vote”); *N. Jersey Media Group*, 308 F.3d at 209 (considering the entire history of access to “political branch proceedings”)). Thus, in *Simone*, the Court looked to “other phases of the criminal process” to determine that experience prong was satisfied with respect to post-trial hearings. 14 F.3d at 838.

Bail hearings fall within the “sphere of adversarial proceedings closely related to trial.” *United States v. Abuhamra*, 389 F.3d 309, 323 (2d Cir. 2004). As the U.S. Court of Appeals for the Second Circuit has recognized, “[b]ail litigation arises only after a defendant is formally charged with crimes that the prosecution must be prepared to prove within a specified time at trial.” *Id.* at 323 (finding that allowing government to proceed *ex parte* and make *in camera* submissions in opposing bail violated defendant’s due process and Sixth Amendment public trial rights). “Further, bail hearings, like probable cause and suppression hearings, are frequently hotly contested and require a court’s careful consideration of a host of facts about the defendant and the crimes charged.” *Id.* Within this “sphere of adversarial proceedings closely related to trial,” there is a strong tradition of openness, as there is to the criminal trial itself. *See, e.g., Press-Enterprise II*, 478 U.S. at 13 (finding a tradition of public access to preliminary hearings as conducted in California); *Press-Enterprise Co. v. Superior Ct.*, 464 U.S. 501, 508 (1984) (finding a history of public access to voir dire); *Richmond Newspapers*, 448 U.S. at 565 (finding a history of access to criminal trials). Thus, experience supports a finding that the First Amendment creates a presumption of public access to bail hearings.

Logic also supports this finding. As the First Circuit has recognized, bail proceedings “have become more significant in recent years,” mandating heavier

reliance on the “logic” prong of the *Press-Enterprise II* inquiry.<sup>2</sup> *In re Globe Newspaper Co.*, 719 F.2d at 51–52 (citing *Chagra*, 701 F.2d at 362). In particular, the First Circuit observed the potential significance of decisions made at bail hearings:

The decision to release on bail an accused who subsequently flees the jurisdiction may effectively end the trial before it has begun; the decision to hold an accused without bail deprives of his liberty a citizen who has not yet been convicted of a crime. In either case, the bail decision is one of major importance to the administration of justice, and openness will help to assure the public that the decision is properly reached.

*In re Globe Newspaper Co.*, 719 F.2d at 52.

As this Court has recognized, “the same societal interests and structural arguments that mandated a [F]irst [A]mendment right of access to criminal trials in

<sup>2</sup> This approach is consistent with applicable Supreme Court precedent and with this Court’s analysis in *Simone*. 14 F.3d at 838 (“rely[ing] primarily on the ‘logic’ prong of the test” where the experience prong “provides little guidance”). In first articulating the principles of “experience” and “logic,” Justice Brennan instructed courts, when determining the right of access as to a particular proceeding, to “consult historical and current practice” and “weigh the importance of public access[.]” *Richmond Newspapers*, 448 U.S. at 589 (Brennan, J., concurring). Justice Brennan explained that while “an enduring and vital tradition” of public access “has a special force” and “implies the favorable judgment of experience,” the value of public access to any particular proceeding “must be measured in specifics.” *Id.* In adopting Justice Brennan’s framework in *Press Enterprise II*, the Supreme Court made clear that “experience” and “logic” are “complementary” and “related” considerations. *Press Enterprise II*, 478 U.S. at 8–9; *see also id.* at 10 n.3 (noting that some courts have recognized a constitutional right to pretrial proceedings given their “importance[.]” even though they had “no historical counterpart”).



*Richmond Newspapers* apply with equal force to pretrial criminal proceedings.”

*Criden*, 675 F.2d at 557. Bail hearings are no exception. *See Chagra*, 701 F.2d at 363 (stating that “[p]retrial release proceedings require decisions that attract significant public interest, and invite legitimate and healthy public scrutiny”) (footnotes omitted). “The [F]irst [A]mendment right of access is, in part, founded on the societal interests in public awareness of, and its understanding and confidence in, the judicial system.” *Id.* (citing *Criden*, 675 F.2d at 556).

Furthermore, “public access is a check on judicial conduct and tends to improve the performance both of the parties and of the judiciary,” and “[t]hese interests are as affected by proceedings to determine conditions of pretrial release as they are by other judicial proceedings.” *Id.* (citing *Criden*, 675 F.2d at 556). This Court should apply its reasoning in *Criden*, as other federal courts of appeals have done, to hold that the First Amendment right of access extends to bail hearings.

## **II. The challenged rules limit the ability of the press to report about bail hearings.**

### **A. Journalists serve as surrogates for the public when they attend and report on court proceedings.**

As the Supreme Court and this Court have recognized, public access to judicial proceedings benefits society as a whole. Open courts promote public confidence in the judicial system by allowing the public to observe criminal proceedings, which “enhances the quality and safeguards the integrity of the

factfinding process” and, at the same time, “fosters an appearance of fairness, thereby heightening public respect for the judicial process.” *Globe Newspaper Co.*, 457 U.S. at 606; *see also Thomas*, 905 F.3d at 282.

Although the news media’s right of access to court proceedings is no greater than that of the public, the U.S. Supreme Court has recognized that reporting by the news media allows members of the public to monitor the criminal justice system without attending proceedings in person. *Richmond Newspapers*, 448 U.S. at 572–73. As this Court has stated, for the right of access to be meaningful, it cannot “extend[] only to those who can squeeze through the door[.]” *United States v. Antar*, 38 F.3d 1348, 1360 (3d Cir. 1994). By attending and reporting on court proceedings, members of the press “function[] as surrogates for the public” who are unable to attend court proceedings themselves. *Richmond Newspapers*, 448 U.S. at 573; *see also Antar*, 38 F.3d at 1360 (quoting *Richmond Newspapers*, 448 U.S. at 574).

There are many reasons why interested members of the public may be unable to attend bail hearings in Philadelphia. They may be unable to attend a proceeding because it occurs in the middle of the night,<sup>3</sup> or due to work or some other immovable commitment; they may be unaware of a pending bail hearing,<sup>4</sup> or

<sup>3</sup> As stipulated by the parties, bail hearings take place 24 hours a day. JA 009.

<sup>4</sup> As stipulated by the parties, names and case numbers of arrestees are not made public until the time of their bail hearing. JA 010.

the courtroom could be full. Members of the press attend bail hearings to provide the public with “knowledge of what occurred there.” *Antar*, 38 F.3d at 1360. And news reporting helps ensure that the benefits of public access described above extend to bail hearings.

Indeed, over the past several years, news reporting has allowed the public to scrutinize what occurs at bail hearings, including the disparate effects that the bail system can have on communities of color and the poor. *See, e.g.*, P.R. Lockhart, *Thousands of Americans Are Jailed Before Trial. A New Report Shows the Lasting Impact*, Vox (May 7, 2019), <https://perma.cc/62MP-CR77>; Fiona Ortiz, *Poor, Nonviolent Inmates Benefit from U.S. Bail Reform Push*, Reuters (July 16, 2015), <https://perma.cc/BDJ7-NSBH>; Casey Tolan, *Making Freedom Free*, Slate (Mar. 29, 2017), <https://perma.cc/4NEN-AN6K>; Jazmine Ulloa, *California Lawmakers Want to Reform a Bail System They Say ‘Punishes the Poor for Being Poor’*, L.A. Times (Dec. 4, 2016), <https://perma.cc/2F92-DESR>. Philadelphia is among those cities in which journalists have reported on the cash bail system. For example, the 2019 Amazon docuseries *Free Meek*, which chronicled the 12-year legal battle of Philadelphia rapper Meek Mill, highlighted systemic flaws in the Pennsylvania state court bail and probation systems. *See* Dan Adler, “*I’m Still in Shock Right Now*”: *Meek Mill on His Probation Win and Onerous Legal Odyssey*, Vanity Fair

(Aug. 1, 2019), <https://perma.cc/Q89N-L8ZR>; *see generally Free Meek* (Prime Video Aug. 9, 2019), <https://perma.cc/TM3C-84BW>.

Through reporting such as this, the public learns about what happens at bail hearings and is able to monitor “how one of the three great political branches of our government conducts its business.” *Criden*, 675 F.2d at 557 (quoting *United States v. Cianfrani*, 573 F.2d 835, 862 (3d Cir. 1978) (Gibbons, J., concurring)).

B. The challenged rules impermissibly burden journalists’ ability to report completely and comprehensively on bail hearings.

If the public is to rely on press reports to observe and understand bail hearings, news organizations and journalists must be able to report about what transpires at these hearings fully, comprehensively, and in detail. By prohibiting members of the public, including the news media, from audio recording during bail hearings, the challenged court rules curtail journalists’ ability to do so.

While journalists are able to attend bail hearings in the Philadelphia Municipal Court, there is no official transcript or audio recording of those proceedings. JA 011. As this Court has recognized, “documentary access is not a substitute for concurrent access, *and vice versa*.” *Antar*, 38 F.3d at 1360 n.13 (emphasis added). In the absence of a transcript or official audio recording of bail hearings, journalists must report on bail hearings based on what they are able to quickly take down in the form of handwritten notes or otherwise remember without assistance. As a result, the challenged court rules limit journalists’ ability to, for

example, verify verbatim quotations and report in thorough detail about bail hearing proceedings. See Adam L. Penenberg, *NYU Journalism Handbook for Students*, <https://journalism.nyu.edu/wp-content/uploads/document-nyu-journalism-handbook-for-students.pdf> (“There are obvious benefits to recording interviews, namely an assurance of accuracy and the creation of a verifiable record.”).

The challenged rules also prevent members of the news media from incorporating audio recordings from bail hearings into their reporting. Members of the public benefit tremendously when they can hear for themselves what happened in a courtroom. Audio recordings of courtroom proceedings most fully and effectively convey the tone and demeanor of judges, parties, and counsel, as well as the pace of the proceedings. The use of audio recordings is paramount for audio-driven forms of media such as radio and podcasts. For example, the crime podcast *Serial* relied extensively on audio recordings of courtroom proceedings in its third season to reveal to the public the inner workings of a Cleveland, Ohio, county courthouse. Tana Ganeva, *How the ‘Serial’ Podcast Exposes Epic Dysfunction in Cleveland’s Criminal Justice System*, *Rolling Stone* (Nov. 17, 2018), <https://perma.cc/6FQP-VQ9E>. The podcast included troubling audio recordings of courtroom proceedings, including recordings of a judge who “threaten[ed] black defendants with jail time if they have more children and

blithely thr[ew] around racist tropes about broken black families and drug use.”  
*Id.*; see also *You’ve Got Some Gauls*, *Serial* (Sept. 20, 2018) at 8:25–9:00,  
<https://perma.cc/SNQ9-HY75>. The inclusion of these audio recordings made  
*Serial*’s narrative “all the more unbelievable because you’re *listening* to people  
act.” *Ganeva*, *supra* (emphasis in original).

The ability to embed audio clips in an online news article has also made  
audio recordings increasingly important for online news sources, allowing them to  
add another dimension to their reporting. For example, National Public Radio  
embedded audio clips from the oral argument in *Loving v. Virginia*—the landmark  
1967 civil rights case in which the U.S. Supreme Court ruled prohibitions on  
interracial marriage unconstitutional—in a 2017 article on NPR’s website  
reflecting on the fifty years since the case was decided. Marisa Peñaloza, ‘*Illicit  
Cohabitation*’: *Listen to 6 Stunning Moments from Loving v. Virginia*, Nat’l Pub.  
Radio (June 12, 2017), <https://perma.cc/WU8D-FV4K>.

Audio recordings allow journalists to produce uniquely impactful reporting  
and to convey the fullest information about court proceedings. See *Antar*, 38 F.3d  
at 1360 (stating that “at the heart of the Supreme Court’s right of access analysis is  
the conviction that the public should have access to *information*”) (emphasis in  
original). The challenged rules, however, leave journalists with no documentary

record of what occurs in Philadelphia bail hearings beyond their own notes, inhibiting their reporting.

### **CONCLUSION**

For the reasons stated herein and in Plaintiff-Appellee's brief, amici respectfully urge the Court to affirm the district court's grant of summary judgment in favor of Plaintiff-Appellee.

Respectfully submitted on this 5th day of June, 2020.

*/s/ Katie Townsend*

Katie Townsend

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## **APPENDIX A**

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

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

**Atlantic Media, Inc.** is a privately held, integrated media company that publishes *The Atlantic*, *National Journal*, 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.

**Gannett** is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states and Guam—together with the iconic USA TODAY—reach an estimated digital audience of 140 million 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**, based at the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at [investigativereportingworkshop.org](http://investigativereportingworkshop.org) about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

**Investigative Studios Inc.** is a nonprofit 501(c)(3) with an independent board and is formally affiliated with the University of California, Berkeley. It is dedicated primarily to producing and reporting journalism in the public interest that is authored by the University's Investigative Reporting Program.

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

**MPA—The Association of Magazine Media (MPA)** is the industry association for magazine media publishers. The MPA, established in 1919, represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands. MPA’s membership creates professionally researched and edited content across all print and digital media on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

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

**The Online News Association (ONA)** is the world’s largest association of digital journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

**The Pennsylvania NewsMedia Association (PNA)**, with headquarters located in Harrisburg, Pennsylvania, represents the interests of over three hundred (300) daily and weekly newspapers and other media-related organizations across the Commonwealth of Pennsylvania in ensuring that the press can gather information and report to the public.

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

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

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

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

### **COMBINED CERTIFICATIONS**

I hereby certify that:

1. The type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4260 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as calculated by the word-processing system used to prepare the brief.
2. The typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface in 14-point Times New Roman.
3. At least one of the attorneys whose names appear on the brief of amicus curiae the Reporters Committee for Freedom of the Press and 14 Media Organizations in support of Plaintiffs-Appellees (the “Amici Brief”), including the undersigned, is a member of this Court, as required by Local Rule 28.3(d).
4. The text of the electronic version of the Amici Brief filed on ECF is identical to the text of the paper copies filed with the Court.
5. The electronic versions of the Amici Brief and this Certification filed on ECF were virus-checked using Avast Security, and no virus was detected.

Dated: June 5, 2020

/s/ Katie Townsend  
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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system with a resulting electronic notice to all counsel of record on June 5, 2020.

Dated: June 5, 2020

By: */s/ Katie Townsend*  
Katie Townsend  
*Counsel for Amici Curiae*