

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1101 Wilson Blvd., Suite 1100  
Arlington, Va. 22209-2211  
(703) 807-2100  
www.rcfp.org

Bruce D. Brown  
Executive Director  
bbrown@rcfp.org  
(703) 807-2101

---

## STEERING COMMITTEE

SCOTT APPLEWHITE  
*The Associated Press*

WOLF BLITZER  
*CNN*

DAVID BOARDMAN  
*Seattle Times*

CHIP BOK  
*Creators Syndicate*

ERIKA BOLSTAD  
*McClatchy Newspapers*

MICHAEL DUFFY  
*Time*

RICHARD S. DUNHAM  
*Houston Chronicle*

ASHLEA EBELING  
*Forbes Magazine*

FRED GRAHAM  
*InSession*

JOHN C. HENRY  
*Freelance*

NAT HENTOFF  
*United Media Newspaper Syndicate*

DAHLIA LITHWICK  
*Slate*

JANE MAYER  
*The New Yorker*

JOHN MCKINNON  
*The Wall Street Journal*

TONY MAURO  
*National Law Journal*

DOYLE MCMANUS  
*Los Angeles Times*

ANDREA MITCHELL  
*NBC News*

MAGGIE MULVIHILL  
*New England Center for Investigative Reporting*

BILL NICHOLS  
*Politico*

SANDRA PEDDIE  
*Newsday*

JIM RUBIN  
*Bloomberg News*

BOB SCHIEFFER  
*CBS News*

ERIC SCHMITT  
*The New York Times*

ALICIA SHEPARD  
*Freelance*

MARGARET LOW SMITH  
*NPR*

PAUL STEIGER  
*Pro Publica*

PIERRE THOMAS  
*ABC News*

SAUNDRA TORRY  
*USA Today*

JUDY WOODRUFF  
*PBS/The NewsHour*

*Affiliations appear only  
for purposes of identification.*

April 30, 2013

The Honorable Third Court of Appeals  
Price Daniel Sr. Building  
209 West 14th Street, Room 101  
Austin, Texas 78701

**RE:** *Adkisson v. Abbott*; Cause No. 03-12-00535-CV: Reporters  
Committee for Freedom of the Press *et al.* Letter *Amici Curiae* in  
Support of the Appellees/Defendants

To the Honorable Court of Appeals:

The Reporters Committee for Freedom of the Press, The Associated Press, Belo Corp., Dow Jones & Company, Inc., the Freedom of Information Foundation of Texas, the Texas Association of Broadcasters, and the Texas Press Association<sup>1</sup> write this letter in support of Appellees Hearst Newspapers, LLC and Attorney General Greg Abbott. As advocates for journalists and the public they serve, we have a strong interest in ensuring that state and federal open records laws, including the Texas Public Information Act, Tex. Gov't Code § 552 *et seq.*, (“PIA”), remain robust. Ready and complete access to government records allows reporters to serve their fundamental constitutional role as government watchdogs and surrogates of the larger public, ensuring that individuals can

---

<sup>1</sup> A full description of each *amici*, including their specific Texas interests, is located at the end of this letter.

meaningfully learn about government activity.

*Amici* have a particular interest in this case because it will determine whether Texas public officials can evade the requirements of the PIA simply by routing their official communications through private email accounts and private cell phone text messaging. Specifically, *amici* write to inform this court about the harm that can result when officials are allowed to use such communications to shield their activities from the public. In its opening words, the PIA lays down the foundational policy that “[t]he people, in delegating their authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” Tex. Gov’t Code § 552.001.

Yet Appellant, in arguing that public servants should be allowed to shield official communications concerning government business by using a private communications platform, seeks to negate this most basic tenet of the PIA so that *officials* can decide what information the public learns about its government. Sanctioning such behavior would not only create a perverse incentive for public officials to use such platforms to circumvent the PIA’s disclosure obligations, but it would also frustrate the state’s commitment to giving its citizens “complete information about the affairs of government and the official acts of public officials and employees.” Tex. Gov’t Code § 552.001.

In their papers, appellees Hearst Newspapers, LLC and Attorney General Greg Abbott establish that the PIA’s text, legislative history, purpose, and its broader policies all point toward the logical conclusion that email messages discussing

government business are subject to the Act's disclosure requirements regardless of whether an official used a public or private account. The Appellees' briefs also show that jurisdictions across the country have arrived at the same, uncontroversial position, holding that it is the functional role of a communication—that is, whether the communication concerns government activities—and not the platform on which it exists that determines whether it is a public record.

Rather than restate these points, *amici* instead provide this Court with tangible examples of the potential real-world harms that arise when public officials attempt to evade the disclosure requirements of public records laws by communicating on private platforms. As the examples discussed below indicate, private communications platforms such as email and text messages are—unfortunately—increasingly being used by public officials to conduct government business and hide questionable and sometimes illegal behavior. In particular, public officials have used private email and text message services to cover up government waste, unethical behavior, and other improprieties.

Officials have also used private communications to shield certain activities from the public, such as when they are lobbied by special interests or taking positions on issues contrary to their public statements. This practice deprives the public of the full context of the officials' decision-making processes and creates a warped public perception of their actions. There is also a real danger that by using private communications platforms, officials are not preserving a record of their basic functions, thus creating gaps in the public record. In other words, even if

officials use private communications to conduct government business for purely benign reasons, the public still loses out on the ability to understand the activities of government because such records may be deleted and not easily recovered. This is precisely why many governments have instituted policies requiring officials to use only government issued email services when conducting business.<sup>2</sup>

Whether officials use private email or text messages to cover up misdeeds, shield important information about their actions, or create gaps in the official record, the result is the same: the public loses trust in its elected leaders. The PIA serves to prevent this by giving the public broad access to records generated by government employees. Appellant seeks a rule from this Court that runs counter to the spirit of the Act and the basic principles of openness that define representative government. *Amici* therefore respectfully ask this Court to affirm the district court's ruling.

**I. Officials have used private email and text messages to cover up waste, lying, and other misdeeds.**

It has unfortunately become increasingly common for public officials to use private email and text messages to shield misconduct and illegal behavior from the public. A telling example concerns disgraced former Detroit Mayor Kwame

---

<sup>2</sup> Several states and local jurisdictions, such as Florida, Wisconsin, and Washington, D.C., have implemented or recommended policies prohibiting the use of private communications platforms to conduct government business. *See, e.g.*, County Commissioners Technology Policy, Board of County Commissioners, Escambia County, Florida, Aug. 20, 2009 (prohibiting the use of personal email, text, or instant message accounts); *Reforming Florida's Open Government Laws in the 21st Century*, The Commission on Open Government Reform, at 166, January 2009 (recommending that all agencies adopt policies prohibiting the use of text and instant messages during public meetings). Such measures are discussed in more detail in Section III, *infra*.

Kilpatrick, whose private text messages revealed he was having an affair with his chief of staff after both had denied it under oath and was misappropriating public funds. The disclosure of the text messages showed that both Kilpatrick and his chief of staff hid their affair when both were questioned in a police whistleblower lawsuit. *Kwame Kilpatrick: A Mayor in Crisis*, DETROIT FREE PRESS, March 29, 2013.<sup>3</sup> The revelation that Kilpatrick lied under oath triggered a massive investigation that cost the city more than \$9 million, revealed misuse of taxpayer money, and resulted in Kilpatrick pleading guilty to committing two felonies. *Id.* The text messages also revealed that Kilpatrick used public funds to cover personal travel expenses relating to the affair. See M.L. Elrick and Jim Schaefer, *Text Message Scandal: City Funds Helped for Mayor, Chief of Staff's Rendezvous*, DETROIT FREE PRESS, Jan. 27, 2008.<sup>4</sup>

Another example concerns former North Carolina Governor Mike Easley. A public records lawsuit filed by *The (Raleigh, N.C.) News & Observer* and various other media outlets seeking access to Easley's email communications revealed that the governor maintained a private email account that he used for state business and that he advised staff to circumvent the public records laws by following his lead.

---

<sup>3</sup> Available at: <http://www.freep.com/article/99999999/NEWS01/80124052/Kwame-Kilpatrick-mayor-crisis>.

<sup>4</sup> To facilitate access to secondary sources, "WLNR," or Westlaw NewsRoom, citations are provided wherever possible. Available at 2008 WLNR 1576470 and at <http://www.freep.com/article/20080127/NEWS01/801270633/City-funds-helped-pay-mayor-chief-staff-s-rendezvous>.

Third Court of Appeals

April 30, 2013

6

*Easley Kept Secret Email Account*, THE NEWS & OBSERVER, Feb. 3, 2010.<sup>5</sup> The records disclosed that Easley also routinely deleted email communications concerning state business from his private account. *Id.* The use of private email provided evidence linked to a federal and state law enforcement investigation into whether Easley failed to properly disclose campaign contributions, including dozens of flights paid for by a political ally. Easley later pleaded guilty to one count of a felony campaign finance violation and also had his law license suspended. *See Easley Pleads to Campaign Finance Violation*, WTVD ABC 11 EYEWITNESS NEWS, Nov. 24, 2010;<sup>6</sup> J. Andrew Curliss, *State Bar Will Revisit Order in Easley Case*, THE NEWS & OBSERVER, Jan. 8, 2012.<sup>7</sup>

The use of non-government electronic communications is not limited to state and local officials. In 2007, Bush administration White House officials used the Republican National Committee' email system to conduct government business, including discussing former lobbyist Jack Abramoff and the politically motivated firings of U.S. attorneys. Congressional leaders released a report that alleged that the practice violated the Presidential Records Act, 44 U.S.C. §§ 2201-2207. *See Paul Singer, Waxman Hits AG on E-mails*, ROLL CALL, June 19, 2007.<sup>8</sup> The

---

<sup>5</sup> Available at 2010 WLNR 2268541 and at [http://projects.newsobserver.com/under\\_the\\_dome/easley\\_kept\\_secret\\_email\\_account](http://projects.newsobserver.com/under_the_dome/easley_kept_secret_email_account).

<sup>6</sup> Available at <http://abclocal.go.com/wtvd/story?section=news/local&id=7805624>.

<sup>7</sup> Available at 2012 WLNR 480468 and at <http://blogs.newsobserver.com/iteam/state-bar-will-revisit-order-in-easley-case>.

<sup>8</sup> Available at 2007 WLNR 11490544 and at [http://www.rollcall.com/issues/52\\_142/-19010-1.html](http://www.rollcall.com/issues/52_142/-19010-1.html).

controversy surrounding officials' use of political email addresses to conduct public business prompted a federal Freedom of Information Act lawsuit seeking the records disclosure. *Democratic Nat'l Comm. v. Dep't of Justice*, 539 F. Supp. 2d 363 (D.D.C 2008). The court ruled that the private emails were subject to FOIA but allowed the government to withhold particular messages under the statute's deliberative process exemption. *Id.* at 368. Similar practices have allegedly continued in the Obama administration, as some officials have been accused of not following federal recordkeeping and disclosure laws by using private email accounts to hide official contact with lobbyists. Jonathan Strong, *Issa Eyes Google in Investigating White House E-mail Abuses*, THE DAILY CALLER, July 12, 2010.<sup>9</sup> After investigating the issue, lawmakers recommended updating the Presidential Records Act, 44 U.S.C. § 2201 *et seq.*, to allow for the archiving of private communications and also recommended that the White House adopt a policy prohibiting the use of personal communication platforms for government business. *See Presidential Records Act Requires Modernization, Lawmakers Say*, COMMUNICATIONS DAILY, May 4, 2011.<sup>10</sup>

The examples discussed above show that if given the opportunity, officials will readily turn to private email and text messages to conceal improper or illegal activities and that some have even gone so far as to counsel co-workers to avoid

---

<sup>9</sup> Available at <http://dailycaller.com/2010/07/12/issa-eyes-google-in-investigating-white-house-e-mail-abuses/>.

<sup>10</sup> Available at 2011 WLNR 14219260.

using government email accounts to conduct business. This makes it all the more critical for public records laws to reach private email and text messages when they concern the public's business. Were this Court to adopt Appellant's position, it would permit officials to conduct a variety of misdeeds that could be easily shielded from public disclosure purely by virtue of the fact that the communications traveled across a nongovernment account.

**II. Officials have used private communications to hide activities from the public that often contradict their public statements and positions.**

Disclosures of private text and email messages sent by public officials have also painted a much different picture of particular officials who have secretly undermined their publicly held positions or worked with lobbyists and special interests they publicly claim to stand against. For example, private text messages released by Orange County, Fla. Mayor Teresa Jacobs in 2012 detailed how she courted corporate lobbyists who were working to stop a voter-created ballot initiative that would have required many employers to provide sick time for their workers. The texts showed that in the days leading up to the council vote to delay the initiative until after the deadline for it to appear in an upcoming ballot, Jacobs received texts from business leaders and local lobbyists working against the activists who were collecting signatures for the measure, despite portraying herself on the campaign trail as an outsider willing to take on powerful interests. David Damron, *Sentinel Exclusive: Jacobs' Texts Show Coordinated Campaign With*



*Foes of Sick Time*, ORLANDO SENTINEL, Sept. 28, 2012.<sup>11</sup> In one text message, Jacobs said that she was unwilling to commit to placing the measure on a future ballot, which contradicted her public promise to eventually put the issue to a vote. *Id.* The texts also showed that Jacobs openly worried about how her backroom dealings would be perceived by the public, stating that she did not want the “electorate to think I am do[i]ng [the lobbyists’] dirty work.” *Id.*

The situation in Orange County was made worse when several high-level officials deleted texts with lobbyists and other opponents of the initiative in the days after the county commission voted to delay putting the initiative on the ballot. The actions have triggered a pending state investigation into whether the officials violated state public records and open meetings laws. David Damron, *State Cops Collect Orange Leaders’ Cellphones in Text Investigation*, ORLANDO SENTINEL, Feb. 26, 2013;<sup>12</sup> David Damron, *‘Textgate’ Has Yet to Bring Major Reforms in Orange*, ORLANDO SENTINEL, April 14, 2013.<sup>13</sup>

A records request by *The Wisconsin State Journal* revealed that members of the Madison, Wisconsin city council regularly emailed or texted colleagues, staff,

---

<sup>11</sup> Available at 2012 WLNR 20748327 and at [http://articles.orlandosentinel.com/2012-09-28/news/os-sick-time-defeat-revealed-20120928\\_1\\_texts-ballot-language-fall-ballot](http://articles.orlandosentinel.com/2012-09-28/news/os-sick-time-defeat-revealed-20120928_1_texts-ballot-language-fall-ballot).

<sup>12</sup> Available at 2013 WLNR 4820482 and at [http://articles.orlandosentinel.com/2013-02-25/news/os-sick-time-cellphones-20130225\\_1\\_sick-time-orange-leaders-commissioner-john-martinez](http://articles.orlandosentinel.com/2013-02-25/news/os-sick-time-cellphones-20130225_1_sick-time-orange-leaders-commissioner-john-martinez).

<sup>13</sup> Available at 2013 WLNR 9161010 and at [http://articles.orlandosentinel.com/2013-04-14/news/os-orange-textgate-reform-aftermath-20130414\\_1\\_public-records-text-messages-county-commissioners](http://articles.orlandosentinel.com/2013-04-14/news/os-orange-textgate-reform-aftermath-20130414_1_public-records-text-messages-county-commissioners).

lobbyists, and others as they sat on the dais and discussed public business. The communications revealed real-time conversations on key matters before the council, including spending millions of tax dollars on redeveloping an historic hotel. Dean Mosiman, *City Council Emails, Texts Present Challenges for Laws Governing Open Meetings, Records*, *The WISCONSIN STATE JOURNAL*, May 7, 2012.<sup>14</sup> The newspaper's investigation showed that there did not appear to be any actual violations of the state's transparency laws because the communications never created a quorum that would be subject to the state's open meetings law. Nonetheless, such conversations—which should otherwise still be public records in their own right—were obscured from the public while officials conducted government business. This certainly deprived citizens of important context about the officials' actions.

Citizens in Louisiana were similarly denied access to the context surrounding Governor Bobby Jindal's decision to impose \$523 million in cuts to the state's Medicaid program, as administration officials used private email accounts to discuss the cuts. The private emails detailed how officials crafted a public relations campaign about the cuts by, among other things, writing press releases and strategizing how to respond to news coverage. One official also directed her colleagues to send certain types of information to her personal email account rather than the one issued to her by the state for government business. Melinda Deslatte,

---

<sup>14</sup> Available at 2012 WLNR 9602323 and at [http://host.madison.com/news/local/govt-and-politics/city-council-emails-texts-present-challenges-for-laws-governing-open/article\\_89466178-96e1-11e1-a11d-0019bb2963f4.html](http://host.madison.com/news/local/govt-and-politics/city-council-emails-texts-present-challenges-for-laws-governing-open/article_89466178-96e1-11e1-a11d-0019bb2963f4.html).

Third Court of Appeals

April 30, 2013

11

*Top Jindal Aides Use Personal Email to Strategize*, THE ASSOCIATED PRESS, Dec. 10, 2012.<sup>15</sup>

In Sarasota, Fla., private emails from City Commissioner Terry Turner provided an unsavory view of how he orchestrated a campaign to change the city's charter to give the city manager more power. The emails detailed how Turner wrote language changing the proposed amendment but then had another person sign it and present it to the full commission, making it appear publicly as though he was not responsible for the amendment. He also organized other presentations given to the commission about the amendment and at one point gave money to a group that lobbied for the change. He also cautioned one person about replying to his city email account. Jessie Van Berkel, *Turner's Email Shows Lobbying*, SARASOTA HERALD-TRIBUNE, Dec. 2, 2012.<sup>16</sup>

Officials working in Washington, D.C.'s Office of the Chief Financial Officer also reportedly used their personal email accounts to conduct official business specifically to avoid having certain communications disclosed to the public. During a deposition, one official admitted using private email specifically to avoid disclosure, saying that there "may have been an issue that we wanted to discuss, but did not necessarily want it to be FOIA-able to the press, and so, we would have perhaps had a conversation on personal e-mail." Mike DeBonis, *Personal E-mail*

---

<sup>15</sup> Available at 2012 WLNR 26425497 and at <http://bigstory.ap.org/article/top-jindal-aides-use-personal-email-strategize>.

<sup>16</sup> Available at 2012 WLNR 25722218 and at <http://www.heraldtribune.com/article/20121202/ARCHIVES/212021034>.

*Used For City Work*, THE WASHINGTON POST, Dec. 8, 2011.<sup>17</sup>

Finally, in March 2009, the city of Venice, Fla., banned the use of private email accounts for city business in order to settle a lawsuit filed by a Sarasota citizen who alleged city council members and city officials had violated state open government laws by conducting city business through private emails. Prior to the settlement, a judge had ordered city officials to turn over their private computers in order to obtain public documents stored on their hard drives. Kim Hackett, *Venice Officials Move to Put E-mail Suit Behind Them*, SARASOTA HERALD-TRIBUNE, Mar. 11, 2009;<sup>18</sup> Lee Williams, *Sarasota City Manager is Violating Court Order, Group Says*, SARASOTA HERALD-TRIBUNE, March 15, 2013.<sup>19</sup>

Private email and text messages give officials an easy way to conceal their conduct and deprive the public of a full understanding of their official actions. As shown above, these platforms enable officials to take public positions that contradict their private email and text messages and otherwise distort the official record. The only way the public ever receives the full picture of an official's actions in such situations is if those same private email and text communications are made public. By adopting a functional test for determining whether private email messages are subject to the PIA's disclosure requirements, this Court would be ensuring that the public can fully understand public officials' actions and not

---

<sup>17</sup> Available at 2011 WLNR 25360163.

<sup>18</sup> Available at <http://www.heraldtribune.com/article/20090311/ARTICLE/903111049>.

<sup>19</sup> Available at <http://www.heraldtribune.com/article/20130315/article/130319730>.

allow them to conduct public business in the dark.

**III. Public officials' use of private electronic communications creates serious obstacles to understanding elected leaders' activities, leading to gaps in the official record.**

Even if public officials use private email or text messages for the most benign reasons or have the best intentions, the mere fact that officials are communicating through services that are not operated by the government creates the potential for large and significant gaps in the public record.<sup>20</sup> Although there will inevitably always be some gaps in any historical record, laws like the PIA were created to minimize this and to ensure that documents chronicling officials' actions are available to the public. Allowing officials to shield particular communications that are tangibly recorded would exacerbate the difficulty the public would have in piecing the historical record together after the fact, as those communications may be lost forever.

For example, all email messages from former Alaska Governor Sarah Palin's first month in office were missing from disclosures made by the state in response to several media requests for the governor's communications, as Palin used a private email address during her term. Sean Cockerham, *Emails from Palin's First*

---

<sup>20</sup> The electronic retention policies of personal email systems can vary widely among various providers and they often differ greatly from the retention schedules maintained by governments. See, e.g., Email retention, Google Apps Documentation and Support, available at <http://support.google.com/a/bin/answer.py?hl=en&answer=151128> (30-day retention period for deleted mail); *Yahoo Extends Data Retention From 90 Days to 18 Months*, THE HUFFINGTON POST, June 18, 2011 (reporting on Yahoo's 18-month data retention policy).

*Month as Governor Missing*, ANCHORAGE DAILY NEWS, June 13, 2011.<sup>21</sup>

Cockerham's story details how the lack of any disclosed email raised real questions about documenting the governor's activities during a crucial period early in her administration as she proposed a state budget, appointed an attorney general, and vetoed a bill that sought to block state public employee benefits to same-sex couples. *Id.* The story also details how the records may have escaped disclosure because officials processing the records request did not have direct access to Palin's private account and instead had to sift through the public email accounts of 55 aides and officials with whom she was considered most likely to communicate.

Former Massachusetts Governor and Republican presidential candidate Mitt Romney also used a private email account during his time as governor, prompting questions as to whether he had preserved the emails in accordance with state archiving laws. Stephen Braun, *Romney Used Private Email Accounts as Governor*, THE ASSOCIATED PRESS, March 9, 2012.<sup>22</sup> The private email messages were the only substantive communications authored by Romney to have been made public, as Romney did not author any email messages using a government account while he was in office. The article pointed out that although the practice did not technically violate any laws, it raised serious questions about how many other

---

<sup>21</sup> Available at 2011 WLNR 11820896 <http://www.adn.com/2011/06/13/1914612/almost-a-month-of-palins-emails.html>.

<sup>22</sup> Available at 2012 WLNR 5214715 and at <http://www.deseretnews.com/article/765558127/Romney-used-private-email-accounts-as-governor.html>.

private email messages were not disclosed or perhaps deleted, making them unavailable for archiving or public disclosure. *Id.* Massachusetts state archive officials said that all emails discussing public business should have been retained, just as if they were written from a government email account. *Id.*

It has also been reported that New York Governor Andrew Cuomo purposefully uses the BlackBerry's private "PIN" messaging system to communicate with staffers rather than using public email accounts because the system does not create copies of the messages that can be later disclosed. Ken Lovett, *Cuomo: PIN — Never Email — Me*, *New York Daily News*, July 16, 2012.<sup>23</sup> Unlike traditional email or text messages, which travel through a server where a copy can later be retrieved, BlackBerry PIN messages are transmitted directly to another person's phone. Because of this technical feature, Cuomo can shield his communications from public disclosure by ensuring that there are no copies of his communications. A public records request filed by the *New York Daily News* found that Cuomo has not sent any email messages from a government issued account, as he prefers to talk over the phone or through the BlackBerry messaging system. The story notes that even if some of Cuomo's conversations would not be subject to the New York's Freedom of Information Law, the lack of any backup record of the communication would make it hard to develop a record about Cuomo's administration, regardless of the legality of the governor's practice.

---

<sup>23</sup> Available at <http://www.nydailynews.com/blogs/dailypolitics/2012/07/cuomo-pin-never-email-me>.

Because of concerns about gaps in the official record, many government officials have created policies that require government business to be conducted solely on government-owned communication mediums. *See, e.g.,* County Commissioners Technology Policy, Board of County Commissioners, Escambia County, Florida, Aug. 20, 2009 (prohibiting the use of personal email, text, or instant message accounts); *Reforming Florida's Open Government Laws in the 21st Century*, The Commission on Open Government Reform, at 166, January 2009 (recommending that all agencies adopt policies prohibiting the use of text and instant messages during public meetings); *Councilman Seeks More Transparency*, WASAU DAILY HERALD, Jan. 6, 2013<sup>24</sup> (describing an effort to require city council members to use public email addresses and to reveal when they are lobbied by special interests); *Presidential Records Act Requires Modernization, Lawmakers Say*, COMMUNICATIONS DAILY, May 4, 2011 (detailing a congressional proposal to prohibit White House employees from using personal email and text communication platforms); Mike DeBonis, *At Swearing-In Ceremony, D.C. Council Cite Need to Build Trust*, THE WASHINGTON POST, Jan. 2, 2013<sup>25</sup> (reporting how the D.C. Council adopted new rules requiring all council members and staff to use their official email accounts to conduct government business); Aileen B. Flores, *El Paso County Commissioner Sergio Lewis Seeks Ban on*

---

<sup>24</sup> Available at 2013 WLNR 430122.

<sup>25</sup> Available at 2013 WLNR 147965 and at [http://www.washingtonpost.com/local/dc-politics/2013/01/02/689ab77a-5532-11e2-bf3e-76c0a789346f\\_story.html](http://www.washingtonpost.com/local/dc-politics/2013/01/02/689ab77a-5532-11e2-bf3e-76c0a789346f_story.html).



Third Court of Appeals

April 30, 2013

17

*Electronics in Meetings*, EL PASO TIMES, April 22, 2013 (proposing a policy banning the use of electronic devices by commissioners while conducting public meetings).<sup>26</sup> These policies recognize that, even when officials are not committing any impropriety while using private email accounts, there is still the potential for the public to miss out on the true account of the actions of their elected leaders.

In summary, officials have used private email and text messages to conceal malfeasance, cover up their own backroom dealings, and create gaps in the public record. Interpreting the PIA to require the disclosure of officials' private emails that concern government business would ensure that public officials cannot skirt the law's disclosure requirements by using a private communication system. Further, it will ensure that the public is able to obtain officials' communications about public business and better understand their actions.

*Amici* therefore respectfully submit this letter and ask this Court to affirm the

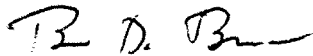
---

<sup>26</sup> Available at: [http://www.elpasotimes.com/ci\\_23076957/lewis-seeks-ban-electronics-commissioners-meetings](http://www.elpasotimes.com/ci_23076957/lewis-seeks-ban-electronics-commissioners-meetings).

Third Court of Appeals  
April 30, 2013  
18

district court's holding in favor of Appellees. We have served copies of this letter on all parties.

Respectfully Submitted,



---

Bruce D. Brown  
Executive Director  
Mark R. Caramanica  
Freedom of Information Director  
Aaron Mackey  
Jack Nelson Freedom of Information Legal Fellow  
The Reporters Committee for Freedom of the Press  
1101 Wilson Boulevard, Suite 1100  
Arlington, VA 22209  
(703) 807-2100

Third Court of Appeals  
April 30, 2013  
19

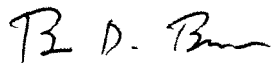
**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this letter has been served upon the below named individuals as indicated.

George E. Hyde  
Erin A. Higginbotham  
Denton, Navarro, Rocha & Bernal, P.C.  
2500 W. William Cannon Dr., Suite 609  
Austin, Texas 78745-5292  
**Attorneys for Appellants**  
via mail and electronic notice:  
George.hyde@rampage-aus.com  
Erin.higginbotham@rampage-aus.com

Jonathan Donnellan  
Ravi Sitwala  
Office of General Counsel  
The Hearst Corporation  
300 W. 57th Street  
New York, NY 10019  
**Attorneys for Appellee**  
via mail and electronic notice:  
RSitwala@hearst.com

Pat Tulinski  
Office of the Attorney General  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
**Attorney for Appellee**  
via mail and electronic notice:  
pat.tulinski@texasattorneygeneral.gov



---

Bruce D. Brown

**IDENTITIES OF *AMICI CURIAE***

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors based in Arlington, Virginia that works nationally 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, including filing *amicus curiae* briefs in state and federal courts throughout the country on issues that impact journalists' ability to gather and disseminate news.

The Associated Press ("AP") is a global news agency organized as a mutual news cooperative under the New York Not-For-Profit Corporation law. AP's members include approximately 1,500 daily newspapers and 25,000 broadcast news outlets throughout the United States. AP has its headquarters and main news operations in New York City and has staff in 321 locations worldwide. AP reports news in print and electronic formats of every kind, reaching a subscriber base that includes newspapers, broadcast stations, news networks and online information distributors in 116 countries.

Belo Corp. owns and operates 20 television stations and their related websites, four of which are in Texas: WFAA-TV in Dallas, KHOU-TV in Houston, KENS-TV in San Antonio and KVUE-TV in Austin. The Dallas, Texas-based company also created the 24-hour regional cable channel Texas Cable News, Inc. ("TXCN"). It has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Dow Jones & Company, Inc. is the publisher of The Wall Street Journal, a daily newspaper with a national circulation of over two million, WSJ.com, a news website with more than one million paid subscribers, Barron's, a weekly business and finance magazine and, through its Dow Jones Local Media Group, community newspapers throughout the United States. In addition, Dow Jones provides real-time financial news around the world through Dow Jones Newswires, as well as news and other business and financial information through Dow Jones Factiva and Dow Jones Financial Information Services. News Corporation, a publicly held company, is the indirect parent corporation of Dow Jones, and Ruby Newco LLC, a subsidiary of News Corporation and a non-publicly held company, is the direct parent of Dow Jones. No publicly held company owns 10% or more of Dow Jones' stock.

The Freedom of Information Foundation of Texas ("FOIFT") is a non-profit Texas-based organization representing a broad spectrum of Texas citizens concerned about the free flow of information and dedicated to open government. Since its founding in 1978, its mission has been to serve as a statewide clearinghouse of information on open government and First Amendment issues and to take action in the public interest on open government and First Amendment problems. FOIFT has not received nor will receive any fee for preparing this brief.

The Texas Association of Broadcasters is a non-profit association that represents more than 1,300 television and radio stations across the state of Texas

with a tradition of community-oriented, free, over-the-air broadcasting. The Texas Association of Broadcasters was founded in 1951 and incorporated one year later and performs numerous services on behalf of its members, including sponsoring and promoting legislation relating to and affecting radio and television broadcasters and defending open government, as well as publishing guidebooks on various legal issues, including access to public information.

The Texas Press Association (“TPA”) is the voice of the state’s newspaper industry, representing some 475 paid newspapers of general circulation. The association promotes the welfare of Texas newspapers, encourages higher standards of journalism, and plays an important role in protecting the public’s right to know as an advocate of First Amendment liberties. Founded more than 130 years ago, the TPA is one of the nation’s oldest and largest newspaper trade organizations. It is a non-profit trade association with two affiliates: Texas Press Service Inc., the for-profit advertising and sales arm of TPA; and the Texas Newspaper Foundation, a 501(c)(3) nonprofit corporation which supports education and training opportunities for working journalists.