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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ANIMAL LEGAL DEFENSE FUND, <i>et al.</i>)	
)	
Plaintiffs,)	Case No. 1:14-cv-00104-BLW
)	
v.)	BRIEF OF THE REPORTERS
)	COMMITTEE FOR FREEDOM OF
C.L. "BUTCH" OTTER, in his official)	THE PRESS AND 15 OTHERS AS
capacity as Governor of Idaho; LAWRENCE)	AMICI CURIAE IN SUPPORT OF
WASDEN, in his official capacity as Attorney)	PLAINTIFFS
General of Idaho)	
)	
Defendants.)	

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STATEMENT OF INTEREST

The Reporters Committee for Freedom of the Press and 15 additional *amici* listed below, through undersigned counsel, respectfully submit this brief as *amici curiae* in support of Plaintiffs.

Media organizations have an interest in ensuring that reliable resources are available to them so that they may gather the news in a way that benefits the public and serves as a watchdog on the meat-processing industry.

In addition to the Reporters Committee, the *amicus* parties are: Association of Alternative Newsmedia, The Association of American Publishers, Inc., The E.W. Scripps Company, First Amendment Coalition, Gannett Co., Inc., The Idaho Statesman, Investigative Reporting Workshop at American University, National Press Photographers Association, National Public Radio, Inc., North Jersey Media Group Inc., Online News Association, Radio Television Digital News Association, The Seattle Times Company, Society of Professional Journalists, Student Press Law Center. Each is described more fully in Appendix A.

DISCLOSURE STATEMENT

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

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

The Association of American Publishers, Inc. is a nonprofit organization that has no parent and issues no stock.

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

First Amendment Coalition is a nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company holds 10% or more of its stock.

The Idaho Statesman Publishing, LLC (The Idaho Statesman) is owned by the member The McClatchy Company which has no parent corporation but is publicly traded on the NYSE under the ticker symbol MNI. Contrarius Investment Management Limited owns 10% or more of the stock of The McClatchy Company.

The Investigative Reporting Workshop is a privately funded, nonprofit news organization affiliated with the American University School of Communication in Washington. It issues no stock.

National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

National Public Radio, Inc. is a privately supported, not-for-profit membership organization that has no parent company and issues no stock.

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

Online News Association is a not-for-profit organization. It has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

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

The Seattle Times Company: The McClatchy Company owns 49.5% of the voting common stock and 70.6% of the nonvoting common stock of The Seattle Times Company.

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

Student Press Law Center is a 501(c)(3) not-for-profit corporation that has no parent and issues no stock.

SUMMARY OF THE ARGUMENT

By criminalizing audio and video recording at agricultural production facilities, the Idaho “ag gag” statute weakens food safety guarantees at the same time it stifles free speech. Journalists and organizations that conduct investigations into meat-processing facilities have long been credited with advancing the safety of the meat the public consumes. Federal inspection has drastically improved the safety of the meat in the past century, but problems within the inspection system leave a gap in food safety that journalists and animal rights organizations have filled. While no journalist has the right to trespass on private property, the overbreadth of the Idaho statute poses a substantial risk of criminalizing lawful – and constitutionally protected – newsgathering activity. Finally, Plaintiffs have standing to challenge the constitutionality of the Idaho statute as courts have long recognized a more flexible standing requirement in First Amendment cases.

ARGUMENT

I. THE IDAHO “AG GAG” STATUTE INFRINGES ON THE FIRST AMENDMENT RIGHTS OF THOSE WHO WANT TO INFORM THE PUBLIC ABOUT IMPORTANT MATTERS SUCH AS FOOD SAFETY.

Idaho already has laws that deal with trespass and fraud. The new law imposing penalties for agricultural production “interference,” Idaho Code Ann. § 18-7042 (2014), makes certain acts *more* illegal and criminalizes other arguably legitimate information-gathering activities simply because they involve recording images and sounds on the property. The intention is obviously to stop activists who wish to record animal abuse or other improprieties in the food production industry. As a result, those who seek to inform the public about abuses are more likely to be prosecuted simply because they sought to document the actions they are revealing. Because unsubstantiated allegations can lead to libel suits and charges of interference with business

operations, it seems particularly disconcerting that the state would seek to criminalize the act of gathering documentary evidence of a violation. The whistleblowers who come forward with information about abuses play an important role in a civil society, and the journalists rely on their information – including their documentation of that information through audio and video recordings – to help the public hold the companies and government regulators accountable as they undertake actions that affect the safety of the food we eat.

A. Investigations by journalists and other organizations into agricultural production facilities have long played a vital role in ensuring food safety.

The watchdog role of the press in protecting the public's interest in a safe food supply and the conditions under which that food is produced has a long and time-honored history. In many respects, investigative journalism was born out of Upton Sinclair's infamous 1906 exposé on Chicago's slaughterhouses, *The Jungle*, and his contemporaries' works. See James O'Shea, *Raking the Muck*, Chi. Trib., May 21, 2006, available at <http://bit.ly/18TwTjR>. Although his novel is centered around a fictitious Lithuanian immigrant, Sinclair conducted extensive research, interviewing health inspectors and workers and going undercover into the meatpacking facilities to witness the unsanitary conditions firsthand. James Diedrick, *The Jungle*, Encyclopedia of Chicago (Janice L. Reiff, Ann Durkin Keating, & James R. Grossman, eds. 2005), available at <http://www.encyclopedia.chicagohistory.org/pages/679.html>. Sinclair's work is credited with aiding passage of the Pure Food and Drug Act and Meat Inspection Act, both enacted in 1906, which instituted vigorous reforms in the meatpacking industry. *Id.*; see also Wallace F. Janssen, *The Story of the Laws Behind the Labels*, Food and Drug Admin., <http://www.fda.gov/AboutFDA/WhatWeDo/History/Overviews/ucm056044.htm> (last updated Dec. 14, 2011) (originally published in *FDA Consumer*, June 1981) ("A single chapter in Upton

Sinclair's novel, *The Jungle*, precipitated legislation expanding federal meat regulation to provide continuous inspection of all red meats for interstate distribution, a far more rigorous type of control than that provided by the pure food bill.")

The spirit of reform that followed publication of *The Jungle* has repeated itself numerous times in the century that followed. In the late 1960s, Nick Kotz, reporter for the *Minneapolis Tribune*, wrote a series of stories revealing widespread unsanitary conditions in the country's meatpacking plants. 113 Cong. Rec. 21283–86 (1967). His investigative reporting contributed to the passage of the Meat Inspection Act of 1967, which extended the reach of federal regulation to cover not only meat that crossed state borders but all slaughterhouses and meat-processing facilities in the United States. *Id.* at 21283. During a congressional session leading to the passage of the Act, Sen. Walter Mondale thanked Kotz for bringing the issue to Congress's attention, saying "the press must take a major share of the credit for action in this area." *Id.*

Kotz won a Pulitzer Prize for his reporting, as did Michael Moss of the *New York Times* in 2010 for calling into question the effectiveness of injecting ammonia into beef to remove *E. coli*. See 2010 – *Explanatory Reporting*, The Pulitzer Prizes, <http://www.pulitzer.org/archives/8819>. Numerous others – such as David Willman with the *Los Angeles Times*, who reported on the missteps of the Food and Drug Administration in approving the diabetes pill Rezulin – have won Pulitzer Prizes for their investigative reporting on consumer safety and federal regulatory oversight. See 2001 – *Investigative Reporting*, The Pulitzer Prizes, www.pulitzer.org/archives/6487; *The 2008 Pulitzer Prize Winners: Investigative Reporting*, The Pulitzer Prizes, <http://www.pulitzer.org/citation/2008-Investigative-Reporting> (awarding the prize to the *Chicago Tribune* staff for reporting on "faulty governmental regulation of toys, car seats and cribs, resulting in the extensive recall of hazardous products and congressional action

to tighten supervision” and *New York Times* reporters “for their stories on toxic ingredients in medicine and other everyday products imported from China, leading to crackdowns by American and Chinese officials”).

The government’s inspection system itself is often flawed, which makes independent observation and verification even more important. At times inspection teams are short staffed, and inspectors can be undermined by their supervisors or choose to turn a blind eye to problems. *See generally Continuing Problems in USDA’s Enforcement of the Humane Methods of Slaughter Act: Hearing Before the Subcomm. on Domestic Policy of the H. Comm. on Oversight & Gov’t Reform*, 111th Cong. (2010). USDA inspector Dean Wyatt repeatedly reported abuses in a Vermont facility he observed, and rather than taking action against the plant, his supervisors demoted and reprimanded him. *Id.* at 38-39. They told him “to drastically reduce the amount of time [he] spent on humane handling enforcement because [he] was finding too many problems.” *Id.* at 38. It was not until the Humane Society of the United States (HSUS) conducted an undercover investigation of the very plant Wyatt complained about that the USDA finally ordered a criminal investigation and shut down the plant. *Id.* at 46, 51 (statement of Dr. Dean Wyatt, FSIS Supervisory Public Health Veterinarian). Wyatt said the HSUS footage showed even more egregious violations than he was aware of and even captured one of his own subordinates, a federal investigator, standing by while plant workers skinned a calf while it was still alive, in violation of the Humane Methods of Slaughter Act. *Id.* The video shows the investigator saying, “If Doc [Wyatt] knew about this, he would shut you down.” *Id.*

The video from Vermont was not the first time HSUS succeeded in exposing abuses in meat-processing plants. HSUS released a video in 2008 from the Hallmark Meat Packing plant in California, showing workers use electric shocks, high-intensity water sprays, and forklifts to

push cows that were too sick to stand on their own. David Brown, *USDA Orders Largest Meat Recall in U.S. History*, Wash. Post, Feb. 18, 2008, available at <http://wapo.st/182ZgvW>. The USDA prohibits the slaughter of animals that cannot walk in part because of concerns the cow might be infected with bovine spongiform encephalopathy, commonly known as “mad cow disease,” which could spread to humans who consume the meat. *Id.*; Press Release, *Statement by Secretary of Agriculture Ed Schafer Regarding Hallmark/Westland Meat Packing Company Two Year Product Recall*, USDA (Feb. 17, 2008), <http://1.usa.gov/1830APr>. As a result of the HSUS video, 143 million pounds of beef were recalled – a full two years’ worth of production from the plant, which was the largest meat recall in U.S. history. Brown, *supra*. Additionally, the USDA suspended production at the plant, and felony animal cruelty charges were brought against two employees. Press Release, *Statement by Secretary of Agriculture Ed Schafer Regarding Animal Cruelty Charges Filed Against Employees at Hallmark/Westland Meat Packing Company* (Feb. 15, 2008), <http://1.usa.gov/18321ft>.

The Supreme Court has found that where there is a willing speaker, the public has a heightened and independent First Amendment right to receive that information. “[W]here a speaker exists, as is the case here, the protection afforded is to the communication, to its source and to its recipients both.” *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756 (1976). *Virginia Pharmacy* explained that this precept was “clear from the decided cases,” *id.*, such as *Klendienst v. Mandel*, 408 U.S. 753, 762-63 (1972), where again the Court referred to a broadly accepted right to “receive information and ideas,” and *Martin v. City of Struthers*, 319 U.S. 141 (1943), where the Court wrote:

The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful

ignorance. This freedom embraces the right to distribute literature, and necessarily protects the right to receive it.

319 U.S. at 143 (internal citations omitted). Where petitioners have a constitutionally protected interest in communicating with the public, the public has a corresponding constitutional interest in receiving the communications in order to fully realize its own political freedoms. *See Garrison v. State of La.*, 379 U.S. 64, 74-75 (1964) (“[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.”).

Here, plaintiffs’ speech can educate the public on a topic of universal importance: the safety of the food they consume. The public cannot themselves monitor every food production facility that their food comes from. They rely on investigative journalists, food safety organizations, federal regulators, and whistleblowers to inform them about the safety of the food they eat. The public has a right to receive information from willing speakers, and that right is at its highest for matters of public concern, like food safety.

B. The Idaho “ag gag” statute creates a significant conflict with the government’s interest in promoting food safety and is overly broad.

The interests of the government and investigative journalists are aligned here. The government has a strong interest in ensuring the public can safely consume the food that is placed on their dinner tables, and investigative journalists are responsible for exposing abuses, which can prevent contaminated meat from entering the food supply. The Idaho ag gag statute acts contrary to the state’s interest. The state would be better served by extending the leash on the watchdogs, not muzzling them.

Regarding privacy interests, the government has already done the calculation and decided that food safety requires some intrusion into production facilities. Plant operations are highly scrutinized by the federal government, with inspectors regularly visiting the premises, observing

operations, testing meat products, and examining livestock. *See Food Safety*, in *Agriculture Fact Book*, USDA (2001–2002), <http://www.usda.gov/factbook/chapter9.htm>. Clearly, the public interest in a safe food supply outweighs whatever interests food production facilities may have in keeping their operations concealed from public view.

The owners and operators of meat-processing plants are protected by law from activities that are truly designed to interfere with their operations. Trespass, fraud, and other laws are sufficient to address acts by individuals or organizations that overstep legal bounds. But a blanket gag on all video and audio recording on agricultural production facilities is overly broad and unnecessary, and it works against the state interest in obtaining the best evidence of possible abuses.

The Idaho statute is exceedingly broad and criminalizes a number of constitutionally protected newsgathering activities. A plain reading of the statute suggests it criminalizes the recording of crops being sprayed by pesticides, Idaho Code Ann. § 18-7042(2)(a)(iii); empty fields being plowed in preparation for planting, § 18-7042(2)(a)(ii); an old barn being repaired, § 18-7042(2)(a)(i); and perhaps even a home gardener planting tomatoes in his yard, § 18-7042(2)(a)(iv). An “[a]gricultural production facility” is essentially defined as any place where “agricultural production” takes place – even public land. § 18-7042(2)(b). “Agricultural production” has an equally broad definition, suggesting this statute controls everything from community gardens, § 18-7042(2)(a)(iv), to packaging factories, § 18-7042(2)(a)(vi), and empty plots of land, § 18-7042(2)(a)(ii).

The statute prohibits anyone from entering “an agricultural production facility” and making an audio or video recording “without the facility owner’s express consent.” § 18-7042(1)(d). There are plenty of scenarios where journalists enter property and record with

implied consent or with the consent of someone who is not the owner, and they should not be criminally penalized for it. Under the Idaho statute, it is a crime for a reporter to record an interview with an employee, perhaps even a manager, of a facility – whether it be a meat-processing plant, a beekeeping facility, or a plant nursery – because the manager gave consent, but the owner did not. *See id.* Likewise, it is a crime for a news crew to film the owner spreading seeds in an open field while standing on the edge of the land, even if the owner gave implied consent by willingly answering questions after knowing he was being filmed. *See id.*

It is equally of concern that the statute criminalizes “obtain[ing] records of an agricultural production facility by force, threat, misrepresentation or trespass,” § 18-7042(1)(b), and the statute includes publicly owned operations in the definition of an “agricultural production facility,” § 18-7042(2)(b). This means someone who seeks to obtain public records under the state’s freedom of information act could be criminally prosecuted if he misrepresents himself, perhaps by telling an agency he wants to use the information for personal use but then publishes it on his blog. Yet the intent of the requester generally should not matter under Idaho’s FOIA statute, and officials are, in fact, prohibited from making any “inquiry” of the requesters except in limited circumstances.¹ Idaho Code Ann. § 9-338(5) (2011). Idaho’s ag gag statute, therefore, adds impediments to obtaining public records that are not present in Idaho’s FOIA statute.

The ramifications of the Idaho statute are profound. The statute directly impedes the work of journalists and their constitutionally protected activity. In *Branzburg v. Hayes*, the Court recognized that newsgathering is an essential component of a free press and is therefore

¹ First, if a person is seeking records about himself that are otherwise not publicly available, the official may verify the person is who he says he is. Idaho Code Ann. § 9-338(5)(a). Second, the official may ensure the information will not be used for a mailing or telephone list. § 9-338(5)(b). Finally, the official may inquire “as required for purposes of protecting personal information from disclosure” under the state’s motor vehicle law and federal law. § 9-338(5)(c).

awarded First Amendment protection: “We do not question the significance of free speech, press, or assembly to the country’s welfare. Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated.” 408 U.S. 665, 681 (1972). By being overly broad and imposing criminal sanctions for lawful newsgathering activities, the Idaho statute violates journalists’ First Amendment rights.

Furthermore, the statute is certain to have a chilling effect on future speech. Surely Idaho journalists will hesitate to cover newsworthy events associated with food production for fear that they will be jailed or fined simply for doing their jobs. Scrutiny of agricultural production facilities can only lead to better food safety. Silencing the speech of non-government actors such as journalists with the threat of criminal conviction would leave a federal inspection system that is fraught with its own problems as the lone watchdog over the food the public consumes. A law that restricts expressive activity while at the same time jeopardizing food safety is repugnant to public policy on both grounds.

II. PLAINTIFFS HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE IDAHO STATUTE ON FIRST AMENDMENT GROUNDS.

The U.S. Supreme Court has long recognized that flexible standing rules apply when a party seeks to challenge a statute on First Amendment grounds. *See Broadrick v. Oklahoma*, 413 U.S. 601, 611-12 (1973). Because the First Amendment requires “breathing space,” the Supreme Court has held that litigants can sue “not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute’s very existence may cause others not before the court to refrain from constitutionally protected speech or expression.”

Wurtz v. Risley, 719 F.2d 1438, 1440 (9th Cir. 1983) (citing *Broadrick*, 413 U.S. at 612); *see*

also Nicolas Cornell, Note, *Overbreadth and Listeners' Rights*, 123 Harv. L. Rev. 1749 (2010) (“Insofar as the First Amendment protects a general right of the citizenry to open and undistorted discourse, such a right is an appropriate basis for standing.”). Flexible rules on standing are especially important when the plaintiff faces the threat of criminal prosecution for engaging in speech and “should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.” See *Babbitt v. UFW Nat’l Union*, 442 U.S. 289, 298 (1979).

The Supreme Court in *Secretary of Maryland v. Joseph H. Munson Co.* explained the rationale for broad standing in First Amendment cases by noting that “[s]ociety as a whole [is] the loser” when individuals curtail their speech or expression for fear of violating a statute. 467 U.S. 947, 956 (1984). When First Amendment interests are at stake, a court’s traditional interest in judicial economy and avoidance of premature interpretation of a statute is outweighed by society’s interest in challenging a statute that has the potential to chill speech. *Id.* at 955-56. Therefore, any party who can show injury-in-fact to satisfy the Constitution’s Article III “case or controversy” requirement and who can properly frame the issues has standing to bring a facial First Amendment challenge. *Id.* at 956, 958.

Here, all the plaintiffs should have standing to challenge the Idaho statute on First Amendment grounds, but *amici* are particularly concerned with the issue of the standing of the journalist parties. Plaintiffs Counterpunch, Will Potter, James McWilliams, and Blair Koch are journalists and authors whose work is impaired by the Idaho statute. See Compl. ¶¶ 35, 37, 38, 40. It is easy to imagine scenarios where journalists could unwittingly violate Idaho’s ag gag statute and be held criminally liable for engaging in traditional newsgathering activities. For example, a journalist could be accused of obtaining records by misrepresentation if the journalist stated one purpose when obtaining the records and then wrote a different, unfavorable story after

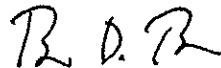
seeing the records. See Idaho Code Ann. § 18-7042(1)(b). Or a journalist could record on a facility's property with the owner's implied – but not express – consent, or with the consent of an employee who is not the owner, and be charged with a violation. § 18-7042(1)(d). The ability of journalists to report reliable information regarding the conditions inside Idaho's agricultural production facilities will be effectively eviscerated. The Idaho statute, therefore, impairs their ability to engage in constitutionally protected speech. As the Court has stated, these plaintiffs "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." *Babbitt*, 442 U.S. at 298.

First Amendment cases require flexible standing rules because the statutes they challenge present a unique harm: chilling speech. Plaintiffs here have shown that they are prevented from engaging in speech by the Idaho statute, and they therefore have standing.

CONCLUSION

For the foregoing reasons, as well as those set forth in the opposition brief of Plaintiffs, the Court should deny Defendants' motion to dismiss.

Respectfully submitted this 28th day of April 2014.



Bruce D. Brown
THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

and



Charles A. Brown
ATTORNEY AT LAW

Attorneys for Amicus Curiae

APPENDIX A: DESCRIPTION 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.

Association of Alternative Newsmedia (“AAN”) is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

The Association of American Publishers, Inc. (“AAP”) is the national trade association of the U.S. book publishing industry. AAP’s members include most of the major commercial book publishers in the United States, as well as smaller and nonprofit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary and professional markets, scholarly journals, computer software and electronic products and services. The Association represents an industry whose very existence depends upon the free exercise of rights guaranteed by the First Amendment.

The E.W. Scripps Company is a diverse, 131-year-old media enterprise with interests in television stations, newspapers, local news and information websites and licensing and syndication. The company’s portfolio of locally focused media properties includes: 19 TV stations (ten ABC affiliates, three NBC affiliates, one independent and five Spanish-language

stations); daily and community newspapers in 13 markets; and the Washington-based Scripps Media Center, home of the Scripps Howard News Service.

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.

Gannett Co., Inc. is an international news and information company that publishes more than 80 daily newspapers in the United States – including *USA TODAY* – which reach 11.6 million readers daily. The company's broadcasting portfolio includes more than 40 TV stations, reaching approximately one-third of all television households in America. Each of Gannett's daily newspapers and TV stations operates Internet sites offering news and advertising that is customized for the market served and integrated with its publishing or broadcasting operations.

The Idaho Statesman is the most widely read newspaper in the state of Idaho, reaching 223,718 adults per week. This includes 124,993 readers each weekday and 160,082 each Sunday.

The Investigative Reporting Workshop, a project of the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

The 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.

North Jersey Media Group Inc. ("NJMG") is an independent, family-owned printing and publishing company, parent of two daily newspapers serving the residents of northern New Jersey: *The Record* (Bergen County), the state's second-largest newspaper, and the *Herald News* (Passaic County). NJMG also publishes more than 40 community newspapers serving towns across five counties and a family of glossy magazines, including (201) Magazine, Bergen County's premiere magazine. All of the newspapers contribute breaking news, features, columns and local information to NorthJersey.com. The company also owns and publishes Bergen.com showcasing the people, places and events of Bergen County.

Online News Association ("ONA") is the world's largest association of online journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. ONA's more than 2,000 members include news writers, producers, designers, editors,

bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper *The Seattle Times*, together with *The Issaquah Press*, *Yakima Herald-Republic*, *Walla Walla Union-Bulletin*, *Sammamish Review* and *Newcastle-News*, all in Washington state.

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.

Student Press Law Center (“SPLC”) is a nonprofit, nonpartisan organization which, since 1974, has been the nation’s only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First

Amendment to the Constitution of the United States. SPLC provides free legal assistance, information and educational materials for student journalists on a variety of legal topics.

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I HEREBY CERTIFY that on the 28th day of April 2014, I filed the foregoing *amicus curiae* brief via the CM/ECF system, which electronically served the following:

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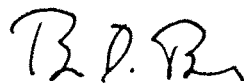
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