No. 15-1293

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

IN RE THE WP COMPANY LLC,
Petitioner.

Petition for a writ of mandamus directed to the United States District Court for the Eastern District of Virginia

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BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 22 MEDIA ORGANIZATIONS* IN SUPPORT OF PETITIONER SEEKING A WRIT OF MANDAMUS

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American Society of News Editors
AOL-Huffington Post
Association of Alternative Newsmedia
Atlantic Media, Inc.
Bloomberg L.P.
California Newspaper Publishers Association
Dow Jones & Company, Inc.
The E.W. Scripps Company
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National Press Photographers Association
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The Seattle Times Company
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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici file this brief in support of Petitioner's request for a writ of mandamus directing the district court to identify which completed juror questionnaires correspond with the jurors who actually served on the jury for the criminal trial of *United States v. McDonnell*. As representatives and members of the media, *amici* have a strong interest in safeguarding the public's constitutional right of access to court documents in criminal cases, and in preserving the ability of the press to report on criminal trials.

The criminal corruption trial of former Virginia governor Robert F. McDonnell and his wife is a case of ongoing interest and importance, both in Virginia and nationwide. Not only was Mr. McDonnell convicted of selling the influence of his public office, but if his conviction is affirmed, he will become the first Virginia governor to go to prison.[2] The public, which has a substantial interest

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[1] Pursuant to Fed. R. App. P. 29(c)(5), *amici* state that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person — other than the *amici*, their members, or their counsel — contributed money that was intended to fund preparing or submitting the brief.

[2] *See* Matt Zapotosky et al., *Robert F. McDonnell sentenced to two years in prison*, The Wash. Post, January 6, 2015, http://wapo.st/1CtVm1H, *archived at* http://perma.cc/DPF6-762C.

in the administration of justice in this case, relies heavily on the press for updates about the case and the pending appeals.[3]

The issues of juror bias and the sufficiency of the voir dire process continue to be contested. On appeal, Mr. McDonnell argues that "the trial court asked no individual questions about bias" and that "the court-prepared questionnaire" used for voir dire was insufficient. *See* Principal Brief of Defendant-Appellant Robert F. McDonnell, *United States v. McDonnell*, No. 15-4019, at 68–69 (4th Cir. Mar. 2, 2015), ECF No. 55. The voir dire questionnaires, therefore, continue to be newsworthy documents, full access to which would improve the quality of reporting about Mr. McDonnell's appeal.

The importance of this Petition extends beyond this case. It is vital that district courts be required to properly apply the correct legal standards when imposing any limitation on the rights of the press and the public to access criminal court records and to witness voir dire. Additionally, this Court can provide needed guidance to the district courts about the proper application of 28 U.S.C. § 1867 and the Jury Selection and Service Act, and prevent courts from abandoning the tradition of openness that is fundamental to our criminal justice system.

Amici bring to this matter a broad perspective on the First Amendment interests at stake in this case, and speak to value of public access to the jury

[3] Maureen McDonnell has filed a notice of appeal but has not yet filed her opening brief.

selection process. While *amici* support the arguments made by Petitioner, *amici* write separately to (1) emphasize how the constitutional presumption of access extends to identifying which questionnaires belong to jurors actually empaneled for trial, (2) illustrate the benefits of public access to jury selection, and (3) explain the text and purpose of the Jury Selection and Service Act, which should not be read to undermine the constitutional right of access to voir dire.

A supplemental statement of identity and interest of *amici curiae* is included below as Appendix A.

SOURCE OF AUTHORITY TO FILE

Amici file this brief with consent of Petitioner and parties to the underlying criminal matters, pursuant to Fed. R. App. P. 29(a).

SUMMARY OF ARGUMENT

The U.S. Supreme Court has established that the press and public enjoy a presumptive First Amendment right of access to voir dire. *Press-Enter. Co v. Superior Court*, 464 U.S. 501, 510–11 (1984) ("*Press-Enterprise I*"). Because courts employ written jury questionnaires, or "voir dire questionnaires," as a substitute for oral voir dire, every court that has confronted the issue has ruled that the presumptive First Amendment right of access extends to jury questionnaires. The right to know which questionnaires belong to jurors actually empaneled for trial is implied or assumed without discussion in much of the case law, and

logically follows from the fact that the information contained in the questionnaires would have been discussed in open court, but for the use of a written document for efficiency purposes.

The Jury Selection and Service Act, 28 U.S.C. § 1861, *et seq.*, does not provide a basis for denying the right of access to voir dire questionnaires, because the Act does not address the voir dire process at all. Rather, the statute creates a framework for courts to identify qualified citizens from the general population for jury service and provides a mechanism for parties to challenge the master jury pool for failing to provide a reasonable cross-section of the community. Because the Act requires challenges to the jury process to be filed *before* voir dire, and because the Act provides for inspection of "records or papers" in *preparation* for filing, the Act clearly was not intended to govern access to voir dire questionnaires. Neither the U.S. Supreme Court nor any federal circuit court has ever held that § 1867(f) may be used to deny access to voir dire questionnaires, and such a result is barred by *Press-Enterprise I* and its progeny.

For these reasons, *amici* respectfully urge this Court to grant the petition for a writ of mandamus and direct the district court to release the jury questionnaires without redacting juror numbers.

ARGUMENT

I. The First Amendment creates a presumptive right of access to voir dire that includes access to jury questionnaires.

Openness is a hallmark of the American criminal justice system because it gives "assurance that the proceedings [are] conducted fairly to all concerned, and it discourage[s] perjury, the misconduct of participants, and decisions based on secret bias or partiality." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980). The U.S. Supreme Court has held that this constitutional right of access applies to pretrial criminal proceedings, including voir dire. *Press-Enter. Co v. Superior Court*, 464 U.S. 501, 510–11 (1984) ("*Press-Enterprise I*"). Criminal proceedings, including jury selection, have been conducted publicly since "before the Norman Conquest." *Id.* at 505. The Court explained:

> The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.

Id. at 508.

With respect to jury selection, openness "allows the public to verify the impartiality of key participants in the administration of justice, and thereby ensures fairness, the appearance of fairness and public confidence in that system." *In re Globe Newspaper Co.*, 920 F.2d 88, 94 (1st Cir. 1990). Public dissemination of

information about jurors "serves to educate the public regarding the judicial system and can be important to public debate about its strengths, flaws and means to improve it." *Id.* In addition, public access to information about jurors can help uncover bias or "deter intentional misrepresentation at voir dire." *Id.*

For these reasons, federal and state courts are in widespread agreement that juror questionnaires, which are used to facilitate and expedite the jury selection process, are subject to the same First Amendment presumption of openness that attaches to voir dire generally. *See In re Access to Jury Questionnaires*, 37 A.3d 879, 886 (D.C. 2012) ("Every court that has decided the issue has treated jury questionnaires as part of the *voir dire* process and thus subject to the presumption of public access.") (citing *In re South Carolina Press Ass'n*, 946, F.2d 1037, 1041 (4th Cir. 1991), and collecting other cases); *see also Stephens Media, LLC v. Eighth Judicial District Court*, 221 P.3d 1240, 1245 (Nev. 2009); *Forum Commc'ns Co. v. Paulson*, 752 N.W.2d 177, 182–83 (N.D. 2008); *Ohio ex rel. Beacon Journal Publ'g Co. v. Bond*, 781 N.E.2d 180, 187–89 (Ohio 2002); *United States v. Bonds*, No. C 07-00732 SI, 2011 WL 902207, at *3 (N.D. Cal. Mar. 14, 2011); *United States v. McDade*, 929 F. Supp. 815, 817 n.4 (E.D. Pa. 1996); *In re Washington Post*, No. 92-301, 1992 WL 233354, at *2 (D.D.C. July 23, 1992); *Copley Press, Inc. v. Superior Court*, 228 Cal. App. 3d 77, 89 (1991).

The U.S. Supreme Court has held that this "presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise I*, 464 U.S. at 510. Before ordering closure or sealing, a court must articulate "findings specific enough that a reviewing court can determine whether the closure order was properly entered," and consider alternatives that would be sufficient to protect against the harm closure or seal would avoid. *Id.* at 510–11.

A. The presumptive right of access to questionnaires includes the right to know which questionnaires correspond to the jurors selected for service.

The issue of whether the court must identify, as a group or with individual names or numbers, the questionnaires of the selected jurors is a question of first impression for this Circuit. *Press-Enterprise I* is clear, however, that the presumptive right of access applies to voir dire, and voir dire has traditionally involved prospective jurors answering questions in open court. 464 U.S. at 508–09. Accordingly, courts that have considered questionnaire access issues have implied or assumed without discussion that openness requires releasing questionnaires capable of being matched to individual jurors. *See, e.g.*, *Bonds*, 2011 WL 902207, at *3 (ordering disclosure of numbered questionnaires so that the press and public "have open and meaningful access" to voir dire, "just as they would have had access to the questions and answers if the Court had conducted an

extended oral voir dire"); *Stephens Media*, 221 P.3d at 1255 (ordering the district court to release "all unredacted completed juror questionnaires"); *In re Access to Jury Questionnaires*, 37 A.3d at 883, 885, 889 (stating that "the public-at-large has a valid interest in 'learn[ing] whether the seated jurors are suitable decision-makers,'" and remanding to the district court to provide access to jury questionnaires that identified jurors by number without discussion of redacting the numbers) (quoting *United States v. Blagojevich*, 612 F.3d 558, 561 (7th Cir. 2010)); *Beacon Journal*, 781 N.E.2d at 196 n.9 (holding that any "nondisclosure of any name, address, or questionnaire response" must meet the *Press-Enterprise I* test); *see also In re Globe Newspaper*, 920 F.2d at 98 ("the prospect of criminal justice being routinely meted out by unknown persons does not comport with democratic values of accountability and openness").

Courts overwhelmingly recognize that written questionnaire responses are a mere substitute for live, oral testimony during the jury selection process, and that questionnaires help to conserve judicial resources by expediting the process and reducing the need for lengthy, in-court testimony by prospective jurors. *See, e.g.*, *In re Access to Jury Questionnaires*, 37 A.3d at 885–86 ("We can think of no principled reason to distinguish written questions from oral questions for purposes of the First Amendment right of public access."); *Beacon Journal*, 781 N.E.2d at 188 ("the purpose behind juror questionnaires is merely to expedite the

examination of prospective jurors"). Thus, the district court in this case, by redacting juror numbers from the completed questionnaires, effectively ordered a partial closure of the voir dire process. If the entire voir dire had been conducted orally in open court, any spectator would have been able to observe each juror, hear each response, identify who was selected for service, and recall how each seated juror answered the questions. However, by employing questionnaires and refusing to identify which answers correspond with the seated jurors, the court has barred the public from monitoring the jury selection process—the weighing of each juror's background and potential biases—to which the press and the public would have been privy had voir dire been conducted orally. The court's choice to expedite jury selection with questionnaires should not undermine the constitutional right of access to voir dire, because questionnaires simply represent oral testimony in written form.

In this case, the district court's conduct with respect to the questionnaires violates the public's presumptive right to witness the voir dire process. Redacting names or juror numbers on questionnaires are limitations on public access to voir dire that could not be achieved in the courtroom setting without a narrowly tailored order, based on specific findings that such redactions are necessary to preserve higher values. *See United States v. Wecht*, 537 F.3d 222, 238 (3d Cir. 2008) ("We cannot reconcile the Supreme Court's conclusion that the public has the right to see

the process in which this power [to decide the fate of a criminal defendant] is exercised (*Richmond Newspapers*) and to see the process that selects those who will exercise the power (*Press-Enterprise I*), with the conclusion that the public has no right to know who ultimately exercises this power.") Here, the district court issued no order with specific findings identifying an overriding interest to be preserved by closure, and the court did not consider and reject alternatives to closure. Therefore, the district court's order violates the First Amendment.[4]

Although the court did release redacted questionnaires and the names of the selected jurors, the court effectively, albeit without physical exclusion, barred the public from observing or identifying the testimony of seated jurors. Complying with one constitutional requirement—releasing the names of jurors, *see Wecht*, 537 F.3d at 239[5]—does not relieve the court of satisfying other requirements, namely

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[4] The district court's refusal to identify which questionnaires belong to seated jurors is the equivalent of conducting voir dire with the jurors testifying behind an opaque screen, or of closing in-court voir dire to the press and the public and later releasing a transcript of the proceeding that includes only the text of the prospective jurors' answers, without any indication of which answers corresponded with seated jurors. Both of these measures clearly intrude on the right of access and tradition of openness, and prevent the public from observing criminal pretrial proceedings. Neither of these courtroom closures would be constitutional without the district court identifying an overriding interest and making specific findings to justify closure in a narrowly tailored order after considering alternatives. *See Presley v. Georgia*, 558 U.S. 209, 214 (2010); *Press-Enterprise I*, 464 U.S. at 510–11.

[5] The question of whether the district court's disclosures were timely is not at issue in this appeal.

permitting the public to observe the jury selection process, *see Press-Enterprise I*, 464 U.S. at 509–10 (stating that closed proceedings "must be rare and only for cause shown that outweighs the value of openness"). Because access to voir dire includes the ability to hear testimony from prospective jurors and identify answers, the district court's order is unconstitutional.

B. The press contributes to public understanding of the criminal justice system and promotes the administration of justice by reporting on jury selection.

Media access to voir dire and juror questionnaires routinely helps to inform the public about court proceedings and ensure the proper functioning of the criminal justice system. In 1986, the *Dallas Morning News* examined thousands of jury selection records and concluded that prosecutors in Dallas County had used peremptory or discretionary strikes to exclude almost 90 percent of eligible black panel members from jury service. *See Batson v. Kentucky*, 476 U.S. 79, 104 & n.4 (1986) (Marshall, J., concurring) (citing Steve McGonigle & Ed Timms, *Race Bias Pervades Jury Selection*, Dallas Morning News, Mar. 9, 1986, at 1, 29)); *see also* Striking Differences, Dallas Morning News, http://goo.gl/Wqn6zg (last visited Mar. 23, 2015) (summarizing the 1986 investigation). The report was cited by Justice Marshall in *Batson*, the seminal case that held, on equal protection grounds, that peremptory challenges could not be used in a racially discriminatory manner. 476 U.S. at 99.

More recently, the *Chicago Tribune* discovered "major inconsistencies between answers in a jury questionnaire and public records" in the criminal prosecution of former Illinois governor George H. Ryan, Sr. *United States v. Warner*, 498 F.3d 666, 705 (7th Cir. 2007) (Kanne, J., dissenting). Specifically, one juror had not disclosed a felony conviction, and another failed to disclose several criminal arrests, as well as the fact that she had given law enforcement false information when she was booked. *Id.* at 676. Based on the *Tribune* report, the district judge halted jury deliberations and requested that the U.S. Attorney's Office conduct a background check on all jurors. *Id.* at 705. Ultimately, two jurors "who provided untruthful answers were excused from further service . . . ." *Id.* at 706. Without the reporting from the *Tribune*, a verdict likely would have been rendered by jurors unfit for service. Access to jury questionnaires enabled the court to avoid the need for a new trial.

In 2011, the *Tribune* again uncovered omissions on juror questionnaires, this time related to the prosecution of William Cellini, a co-defendant in the case against former Illinois governor Rod Blagojevich. *See* Annie Sweeney & Jason Meisner, *Juror in Cellini trial appears to have hidden two felony convictions, Tribune finds*, Chicago Tribune, Nov. 11, 2011, http://goo.gl/Jhj0ec, *archived at* http://perma.cc/LP2U-3EX4. One juror failed to disclose two felony convictions on her juror questionnaire. *Id.* The district court judge later ruled that the

omissions were "understandable, honest and inadvertent errors," and that the juror had not been biased against the defendant. *See* Rob Wildeboer, *Cellini juror lies not enough to overturn conviction*, WBEZ.org, Jan. 24, 2012, http://www.wbez.org/node/95791, *archived at* http://perma.cc/RQC5-WXYY. Although the juror was not excused and the verdict not overturned, the *Tribune* report helped the court to function properly with full access to all relevant information, and enabled the district judge to make an appropriate ruling on the issue in a timely manner.

Reporting on jury selection informs the public about the criminal justice system and gives the public "confidence that standards of fairness are being observed" or that "deviations" from "established procedures . . . will become known." *Press-Enterprise I*, 464 U.S. at 508. For example, earlier this year, in the Boston Marathon bombing case against Dzhokhar Tsarnaev, the media reported on juror questionnaire answers cited in motion papers. *See* David Boeri, *Questionnaires Reveal Most Potential Jurors Believe Tsarnaev Is Guilty*, WBUR, January 22, 2015, http://goo.gl/G4KQcw. Media reports explained that the start of trial would be delayed because the jury selection process had been more time consuming than expected, and simultaneously raised questions about whether Tsarnaev could receive a fair trial in Boston, based on questionnaire responses. *Id.* The questionnaires showed that 68 percent of prospective jurors believed Tsarnaev was guilty, and several prospective jurors had family members or acquaintances

who were injured in the explosion. *Id.* When the district court finally seated a jury after nearly two months, one media outlet, which had "watched the proceedings and became acquainted with a variety of citizens from the four corners of eastern Massachusetts," proclaimed that the judge "had reached his goals, as he had all along insisted he would," of seating a "fair and impartial" jury. *See* David Boeri & Zoë Sobel, *Judge's Quest To Find A 'Fair And Impartial' Tsarnaev Jury in Boston Finally Comes To A Close*, WBUR, Mar. 4, 2015, http://goo.gl/J7KzbM, *archived at* http://perma.cc/SH8W-D3E4.

These examples reaffirm the benefits of openness, including promoting public confidence in the judiciary's ability to observe proper procedure and administer justice fairly.

II. The Jury Selection and Service Act does not restrict access to voir dire questionnaires, but rather creates a framework for courts to identify a pool of qualified jurors to be summoned for jury service.

The district court's reliance on 28 U.S.C. § 1867(f)[6] is misplaced, because that provision and the rest of the Jury Selection and Service Act of 1968 ("the

[6] Section 1867(f) provides: "The contents of records or papers used by the jury commission or clerk in connection with the jury selection process shall not be disclosed, except pursuant to the district court plan or as may be necessary in the preparation or presentation of a motion under subsection (a), (b), or (c) of this section, until after the master jury wheel has been emptied and refilled pursuant to section 1863(b)(4) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion. Any person who

Act"), 28 U.S.C. § 1861, *et seq.*, have *nothing* to do with access to voir dire questionnaires. Rather, the Act ensures that litigants in federal court "have the right to grand and petit juries selected at random from a fair cross section of the community" and that "all citizens shall have the opportunity to be considered for service on grand and petit juries" and "to serve as jurors when summoned for that purpose." 28 U.S.C. § 1861. The Act generally addresses the manner in which courts may identify representative citizens from the population at large to fill the general jury pool from which individuals are summoned for jury duty, as well as how parties may challenge the court's written procedures for the jury selection process. *United States v. Jones*, 533 F. App'x 291, 299 (4th Cir. 2013) (stating that the Act "provides procedures for challenging the required written plan for jury selection" and permits the challenger to inspect records related to that process). "Congress intended through § 1867(f) to insure that the national interest in fair and impartial juries receive primacy over the interest in grand jury secrecy . . . ." *United States v. McLernon*, 746 F.2d 1098, 1123 (6th Cir. 1984). Section 1867(f) simply does not address access to voir dire materials and cannot be a valid basis for denying access to voir dire questionnaires.

The Act requires district courts to devise a plan that will achieve "the random selection of a fair cross section of the persons residing in each of the

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discloses the contents of any record or paper in violation of this subsection may be fined not more than $1,000 or imprisoned not more than one year, or both."

community." 28 U.S.C. § 1863(b)(3). A party to a criminal or civil case may move to dismiss an indictment or stay proceedings "on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury." § 1867(a)–(c). Tellingly, challengers must so move "before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered" grounds for the motion, "whichever is earlier." *Id.* The fact that parties must, under either prong of the provision, file these challenges *before* voir dire is a clear indication that the Act does not address access to voir dire questionnaires.

Relatedly, the fact that challengers have a right to inspect "records or papers used by the jury commission or clerk in connection with the jury selection process" for the "*preparation*" of a challenge that, as explained above, must be filed *before* voir dire begins, is further indication that the "records or papers" referenced in the Act do *not* include voir dire questionnaires. *See* § 1867(f) (emphasis added); *accord Test v. United States*, 420 U.S. 28, 29–30 (1975) (holding that a challenger had the right under § 1867(f) to inspect the "master lists from which his grand jury had been, and petit jury would be, selected," when he claimed the lists "systematically excluded" certain demographics). Although the Act does not define the terms "records" or "papers," the documents described throughout the Act include the court's written plan for qualifying and calling jurors, jury

summonses, the "jury qualification forms," and related reports or documents compiled or maintained by the court. *See* 28 U.S.C. § 1869(h) (defining "juror qualification form" as a questionnaire eliciting the "name, address, age, race, occupation, education, length of residence within the judicial district, distance from residence to the place of holding court, prior jury service, and citizenship of a potential juror, and whether he should be excused or exempted from jury service," among other things). The Act never mentions voir dire questionnaires, and never mentions voir dire other than to set the deadline for a challenge under the Act, as explained above. *See* § 1867(a)–(c). The voir dire questionnaires are *not* "records or papers used by the jury commission or clerk," but rather are documents used by the parties and the judge to empanel a petit jury. The Act does not contain any language restricting access to voir dire questionnaires, which serve as a substitute for oral testimony. [7]

Neither the U.S. Supreme Court nor any federal circuit has ever suggested that § 1867(f) may be used to deny public access to voir dire questionnaires. Such an argument is foreclosed by *Press-Enterprise I* and the cases recognizing the

[7] Section 1867(f) provides that anyone "who discloses the contents of any record or paper in violation of this subsection may be fined not more than $1,000 or imprisoned not more than one year, or both." If, as the district court suggested, "record or paper" included voir dire questionnaires, and the Act therefore prohibited disclosure of the questionnaires, these penalties could not be squared with the decisions of "[e]very court that has decided" that voir dire questionnaires are "subject to the presumption of public access" under the First Amendment. *In re Access to Jury Questionnaires*, 37 A.3d at 886.

public's presumptive right of access to voir dire questionnaires—all decided after § 1867(f) was enacted. *Accord Test*, 420 U.S. at 29–30 (permitting a challenge to the systematic exclusion of certain demographics from the master jury lists under § 1867(f)); *Jones*, 533 F. App'x at 299 (stating that the Act "codifies the Sixth Amendment right to have a jury selected from a fair cross section of the community" and permits challenges to the "required written plan for jury selection"); *United States v. Gray*, 47 F.3d 1359, 1368 (4th Cir. 1994) (affirming denial of a § 1867(f) motion challenging the English language proficiency of jurors, in part because the "information regarding juror qualifications was available to Gray and his counsel prior to voir dire"); *United States v. Curry*, 993 F.2d 43, 44 (4th Cir. 1993) (holding that denying a defendant the right to inspect "the master list of jurors from which the grand jury indicting him was selected" violated the defendant's rights under § 1867).

The district court erroneously interpreted § 1867(f) to apply to voir dire questionnaires and misconstrued the decision in *In re Baltimore Sun*, 841 F.3d 74 (4th Cir. 1988). In that case, this Court considered whether "information on the venire list" that had been "compiled from the completed questionnaires of prospective jurors" was subject to disclosure. *Id.* at 75. This Court ruled that the names and addresses of the jurors were "part of the public record" but that "any information *contained on the venire list* other than names and addresses of the

veniremen and women should not be made public under § 1867(f)." *Id.* (emphasis added). This Court did not rule on the right of access to voir dire questionnaires, because the district court conducting the underlying criminal trial had not even used questionnaires: "the entire *voir dire* proceeding was in open court and attended by the press." *Id.* Neither § 1867(f) nor *In re Baltimore Sun* authorizes withholding voir dire questionnaires in this case.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request this Court to grant the writ of mandamus and order the district court to release the jury questionnaires.

Respectfully submitted,

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Dated: March 27, 2015
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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a) because this brief contains 4,649 words, excluding the parts of the brief exempted Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Time New Roman font.

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Dated: March 27, 2015
Washington, D.C.

No. 15-1293

IN THE UNITED STATES COURT OF APPEALS
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IN RE THE WP COMPANY LLC,
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APPENDICES A & B TO THE BRIEF OF *AMICI CURIAE*

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APPENDIX A

SUPPLEMENTAL STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors working to defend and preserve 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, and it frequently files friend-of-the-court briefs in significant media law cases.

With some 500 members, **American Society of News Editors** ("ASNE") is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

AOL Inc. (NYSE: AOL) is a media technology company with a mission to simplify the internet for consumers and creators by unleashing the world's best builders of culture and code. As the 4th largest online property in the U.S., with

more than 200 million monthly consumers of its premium brands, AOL is at the center of disruption of how content is being produced, distributed, consumed and monetized by connecting publishers with advertisers on its global, programmatic content and advertising platforms. AOL's opportunity lies in shaping the future of the digitally connected world for decades to come.

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.

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

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

The **California Newspaper Publishers Association** ("CNPA") is a nonprofit trade association representing the interests of nearly 850 daily, weekly and student newspapers throughout California. For over 130 years, CNPA has worked to protect and enhance the freedom of speech guaranteed to all citizens and to the press by the First Amendment of the United States Constitution and Article 1, Section 2 of the California Constitution. CNPA has dedicated its efforts to protect the free flow of information concerning government institutions in order for

newspapers to fulfill their constitutional role in our democratic society and to advance the interest of all Californians in the transparency of government operations.

Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with more than 1,800 journalists in nearly fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

The E.W. Scripps Company is a diverse, 137-year-old media enterprise and the fifth-largest independent television station owner. The company's portfolio of locally focused media properties includes: 33 TV stations; 34 radio stations in 8 markets; Washington-based Scripps Media Center; mobile video news service Newsy; and weather app developer WeatherSphere. Scripps also serves as the steward of the Scripps National Spelling Bee, the nation's largest, most successful and longest-running educational program.

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.

First Look Media, Inc. is a new non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting.

Hearst Corporation is one of the nation's largest diversified media companies. Its major interests include the following: ownership of 15 daily and 38 weekly newspapers, including the Houston Chronicle, San Francisco Chronicle and Albany (N.Y.) Times Union; nearly 300 magazines around the world, including Good Housekeeping, Cosmopolitan and O, The Oprah Magazine; 29 television stations, which reach a combined 18% of U.S. viewers; ownership in leading cable networks, including Lifetime, A&E and ESPN; business publishing, including a joint venture interest in Fitch Ratings; and Internet businesses, television production, newspaper features distribution and real estate.

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 McClatchy Company, through its affiliates, is the third-largest newspaper publisher in the United States with 29 daily newspapers and related websites as well as numerous community newspapers and niche publications.

MediaNews Group's more than 800 multi-platform products reach 61 million Americans each month across 18 states.

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.

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

News Corporation is a global, diversified media and information services company focused on creating and distributing authoritative and engaging content

to consumers throughout the world. The company comprises leading businesses across a range of media, including: news and information services, digital real estate services, book publishing, digital education, and sports programming and pay-TV distribution.

Newspaper Association of America ("NAA") is a nonprofit organization representing the interests of more than 2,000 newspapers in the United States and Canada. NAA members account for nearly 90% of the daily newspaper circulation in the United States and a wide range of non-daily newspapers. The Association focuses on the major issues that affect today's newspaper industry, including protecting the ability of the media to provide the public with news and information on matters of public concern.

The 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.

Time Inc. is the largest magazine publisher in the United States. It publishes over 90 titles, including Time, Fortune, Sports Illustrated, People, Entertainment Weekly, InStyle and Real Simple. Time Inc. publications reach over 100 million adults, and its websites, which attract more visitors each month than any other publisher, serve close to two billion page views each month.

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.

APPENDIX B

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief of *amici curiae* with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the appellate CM/ECF system on March 27, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Bruce D. Brown

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