

No. 15-2560

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

WIKIMEDIA FOUNDATION, *et al.*,

Plaintiffs-Appellants,

v.

NATIONAL SECURITY AGENCY, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Maryland, Baltimore Division

**BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE
PRESS, THE THOMAS JEFFERSON CENTER FOR THE PROTECTION
OF FREE EXPRESSION AND 17 MEDIA ORGANIZATIONS AS *AMICI
CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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STATEMENT OF INTEREST OF AMICI CURIAE¹

Amici curiae are the Reporters Committee for Freedom of the Press, Thomas Jefferson Center for the Protection of Free Expression, American Society of News Editors, Association of Alternative Newsmedia, First Amendment Coalition, First Look Media Works, Inc., Free Press, Freedom of the Press Foundation, GateHouse Media, LLC, International Documentary Assn., Investigative Reporters and Editors, Investigative Reporting Workshop at American University, The Media Consortium, National Press Photographers Association, North Jersey Media Group Inc., Online News Association, Radio Television Digital News Association, Reporters Without Borders, and the Tully Center for Free Speech. *Amici* are described in more detail in Appendix A.

This case is of particular importance to *amici* because the court below erred when it held that Plaintiffs lacked standing to assert that warrantless national security surveillance under Section 702 of the Foreign Intelligence Surveillance Act impinges upon their First Amendment rights. The holding below strays from Fourth Circuit precedent regarding standing to assert First Amendment claims and

¹ Pursuant to Rule 29(c)(5) of the Federal Rules of Appellate Procedure, *amici* state that no party's counsel authored this brief in whole or in part, and no party, party's counsel, or any other person, other than the *amici curiae*, their members, or their counsel, contributed money that was intended to fund preparing or submitting the brief. Pursuant to Rule 29(c)(4), all parties have consented to the filing of this brief.

undermines the ability of the press to gather and report the news.

SUMMARY OF ARGUMENT

Pursuant to Section 702 of the Foreign Intelligence Surveillance Act Amendments Act of 2008, 50 U.S.C. § 1881a, the National Security Agency acquires the contents of communications of non-United States persons who are located outside the United States through “upstream collection.” Under this program, the government compels backbone service providers—companies that control the telecommunications equipment through which ISPs route their traffic—to provide communications sent through their equipment to the government. Privacy and Civil Liberties Oversight Board, *Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act*, 7 (July 2, 2014) (“PCLOB Report”). The Plaintiffs challenged the upstream program on the grounds that it violates the First Amendment as well as the Fourth Amendment.

Amici curiae submit this brief to emphasize that this Court should consider the Plaintiffs’ First Amendment interests in considering whether they have established standing to challenge upstream surveillance. Plaintiffs include two media organizations primarily involved in creating and disseminating news and content to readers: The Nation, a weekly magazine, and Wikimedia Foundation, which develops and distributes free educational content. A third Plaintiff, PEN

American Center, is an association of writers that advocates for freedom of expression and the free flow of information. Upstream surveillance of internet and phone communications can reveal a reporter's sources, documentary materials, and work product. Bulk surveillance like the upstream program has already given rise to a widespread chilling effect traceable to the conduct challenged in this case. These specific harms constitute a cognizable injury and give rise to standing in this case.

INTRODUCTION

Section 702 of the Foreign Intelligence Surveillance Act Amendments Act of 2008 allows the government to collect communications occurring abroad and relating to foreign persons. 50 U.S.C. § 1881a. According to an unclassified report regarding the government's programs under Section 702, for example, the PRISM program allows the government to send a "selector"—a piece of information, such as an email address, that identifies a particular user—to an internet service provider ("ISP"), compelling that ISP to provide communications sent to or from that selector to the government. PCLOB Report at 7. Separately, Section 702 also permits upstream surveillance, which facilitates the collection of communications "about" targeted selectors acquired directly from the internet backbone. *Id.* at 119 (describing "upstream" surveillance as "the process whereby the NSA acquires communications as they transit the Internet 'backbone' within

the United States”). Notably, upstream surveillance allows the government to seize communications *about* a target, not just communications sent to or from that target. *Id.*

As PCLOB recognized in its Report, there are “serious and novel questions raised by ‘about’ collection as a constitutional and policy matter.” *Id.* at 124. Among those pressing questions is the fact that domestic communications that include a targeted e-mail address and that transit a foreign server—for example, a forwarded email that includes an email “selector” in the body—can be collected despite the absence of any suspicion. In addition, under Section 702 the government can target for collection the account of any foreign person who “may possess information ‘with respect to a foreign power or foreign territory that relates to . . . the conduct of the foreign affairs of the United States.’” *Id.* at 115.

This type of collection has a significant, detrimental effect on reporters and those engaged in gathering or disseminating the news. Journalists’ foreign sources, for example, may be targeted for surveillance under Section 702. As a result, the government can monitor domestic reporters’ conversations about third parties—such as those between reporters and editors discussing a confidential source—to obtain information relating to that third party, even if that party is not part of the conversation.

This practice undermines reporters' confidence that their online communications, contacts lists, documentary materials, and work product are secure. In turn, bulk surveillance of online activity makes it difficult for the press to investigate matters of public interest.

ARGUMENT

- I. The District Court erred in characterizing Plaintiffs' claims as too speculative to give rise to standing.

The District Court below erred in holding that *Clapper v. Amnesty International* establishes that Plaintiffs lack standing here. See Op. at 29 n.27 (JA 202) (citing *Clapper v. Amnesty Intern. USA*, 133 S.Ct. 1138, 1150–52 (2013)). In *Clapper*, a number of public interest organizations, journalists, and lawyers challenged the constitutionality of Section 702. As they do here, the plaintiffs argued that the statute violated the First and Fourth Amendments and Article III of the Constitution. *Id.* at 1146. Plaintiffs claimed that the likelihood that their communications with non-United States persons would be intercepted was high, and that they had been “forced to take costly and burdensome measures to protect the confidentiality of their international communications.” *Id.* In a 5-4 decision, the Supreme Court held that the plaintiffs lacked standing to challenge the program. Characterizing the plaintiffs' fears as “highly speculative,” *id.* at 1148, the Court dismissed their “self-inflicted injuries” as not sufficient to give rise to standing. *Id.* at 1152.

Since *Clapper*, as Plaintiffs point out, the government has made extensive public, unclassified disclosures describing surveillance activities under Section 702. *See* App. Br. at 52. Nevertheless, the District Court below found that *Clapper* foreclosed the argument that the Plaintiffs may have standing under the First Amendment. *See* Op. at 29 n.27 (JA 202) (citing *Clapper*, 133 S.Ct. at 1150–52). Unlike in *Clapper*, however, where the plaintiffs asserted harms “stemming from a reasonable fear of *future* harmful government conduct,” 133 S.Ct. at 1146 (emphasis in original), Plaintiffs here challenge conduct that is not only ongoing and publicly acknowledged, but also creating large-scale effects that have been documented in multiple studies and reports, which are discussed in more detail below. *See, e.g.*, Pew Research Center, *Investigative Journalists and Digital Security* (Feb. 2015), <http://pewrsr.ch/1DPwQ9b> [Pew Study hereinafter]; PEN American Center, *Chilling Effects: NSA Surveillance Drives Writers to Self-Censor* (Nov. 2013), www.pen.org/chilling-effects [PEN Report hereinafter]; Human Rights Watch, *With Liberty to Monitor All* (July 2014), <http://hrw.org/node/127364> [Human Rights Watch Report hereinafter].

This Circuit has recognized that chilling effects can give rise to standing for First Amendment claims. “In First Amendment cases, the injury-in-fact element is commonly satisfied by a sufficient showing of ‘self-censorship, which occurs when a claimant is chilled from exercising h[is] right to free expression.’” *Cooksey v.*

Futrell, 721 F.3d 226, 235 (4th Cir. 2013), quoting *Benham v. City of Charlotte*, 635 F.3d 129, 135 (4th Cir. 2011). “Government action will be sufficiently chilling when it is ‘likely [to] deter a person of ordinary firmness from the exercise of First Amendment rights.’” *Benham*, 635 F.3d at 135, quoting *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005). While plaintiffs must allege a sufficient “specific present objective harm or a threat of specific future harm” to establish standing, *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972), that standard is easily met in the present case.

A. Communications surveillance impedes journalists’ ability to safeguard confidential sources.

Traditionally, a reporter’s reputation for protecting her confidential sources is one bargaining chip that she can use to get useful information the public deserves to know. For example, the Watergate scandal was reported through the use of an unnamed source who only revealed his identity decades after the story broke. The source, known as “Deep Throat” for roughly thirty years, turned out to be W. Mark Felt, a high-ranking FBI agent. Felt was so “wary of his role as a confidential source” that Bob Woodward, one of the reporters responsible for breaking the Watergate scandal, claimed that Felt had “lied to his family, to his friends, and colleagues, denying he had helped [Woodward and his colleagues].” John D. O’Connor, *I’m the Guy They Called Deep Throat*, *Vanity Fair* (July 2005) (available at <https://perma.cc/LH5C-KERT>). Felt’s willingness to provide facts to

break the Watergate scandal certainly required great trust that Woodward would not reveal him.

Today, surveillance under Section 702 undercuts confidential sources' willingness to speak to reporters because the government need not confront a reporter or source directly in order to identify and expose the source. Under Section 702, the government may collect information "about" targeted selectors regardless of whether the selector is actually suspected of wrongdoing. Indeed, recent studies by Human Rights Watch, the Pew Research Center, and PEN American Center reflect that this atmosphere of surveillance is creating widespread chilling effects within the press.

B. Upstream surveillance has created well-documented chilling effects on the journalistic profession.

Numerous recent studies have documented the precise chilling effects that upstream surveillance programs have on the press, especially journalists who report on intelligence, national security, and law enforcement issues. Upstream surveillance stifles desirable First Amendment activity by restricting availability to sources and information, impeding the newsgathering process, and lowering the level of public discourse.

i. Upstream surveillance interferes with journalist-source relationships.

Open communication with sources is essential to the practice of journalism. The ability to gather information is equally important as the right to disseminate the information through various media. However, communicating with existing sources and cultivating new sources has become increasingly difficult since knowledge of NSA surveillance became public. One-third of journalists interviewed by the Pew Research Center for a report on digital security practices reported that “over the past year, it has become harder to find sources willing to go on the record, a term that means what the source says can be reported, published, or aired.” Pew Study at 8. Furthermore, 80 percent responded that “being a journalist increases the likelihood that their data will be collected by the U.S. government.” *Id.* at 6. The reluctance of journalists to contact sources creates a less robust media, less able to serve the public.

A 2013 report by PEN American Center documents myriad ways in which journalists, writers, and reporters are chilled by surveillance. *See generally* Pen Report. PEN reported that “writers are self-censoring their work and their online activity due to their fears that commenting on, researching, or writing about certain issues will cause them harm.” *Id.* at 6. Twenty-eight percent of respondents to PEN reported that they had “curtailed or avoided social media activities,” while 24 percent reported having “deliberately avoided certain topics in phone or email conversations.” *Id.*

Journalists who report on intelligence, national security, and law enforcement pinpoint two specific effects of communications surveillance that have restricted their ability to gather information. First, the ability to gather information from sources is burdened because of widespread uncertainty concerning the scope of the government's surveillance power. *See* Human Rights Watch Report at 22. Because upstream surveillance is conducted in secret, few people—let alone journalists—know precisely how and when the government chooses to access information. The Human Rights Watch Report pointed out that because of uncertainty surrounding the minimization and use restrictions that apply to information gathered under foreign intelligence surveillance authorities, “many journalists see the government's power as menacing because they know little about when various government agencies share among themselves information collected through surveillance, and when they deploy that information in leak investigations.” *Id.*

ii. Upstream surveillance chills the newsgathering process.

Increased awareness of government surveillance has substantially changed and hampered newsgathering activity. Forty-nine percent of investigative reporters have changed the way they store and share sensitive documents. *See* Pew Study at 10. Changes include encrypting e-mails sent to both sources and colleagues (14%), and using anonymous e-mail accounts (14%). *Id.* at 9. Reporters also

indicated that they use disposable phones for professional conversations rather than phones easily traceable to them. *See* Human Rights Watch Report at 37 (“Journalists and their sources have also made creative use of common technologies . . . [t]he most common such approach is to use ‘burner phones’ — cell phones with limited identifiable links to the owner, and which one disposes of after a matter of days or weeks.”). Other journalists have attempted to sidestep technology that could be compromised. Seventeen percent of investigative reporters do not use third-party servers when communicating via e-mail, and others report uploading sensitive documents to computers that have no internet access. *See* Pew Study at 10. Only two percent of journalists surveyed by the Pew Center said they have “a lot of confidence” that their ISP will protect their information from carte blanche access, whereas 90 percent believe their ISP would share their data with the NSA. *Id.* at 3.

Journalists have responded to this uncertain environment by employing new technology to protect information and avoiding electronic tools that are easily manipulated. *See* Human Rights Watch Report at 30-37. These efforts are not de minimis. Journalists who merely want to protect their content and sources must learn how to use a particular technology or master a particular strategy. These extra steps and changed practices have discouraged many journalists. *See id.* at 34. Those reporters are forced to choose among performing their work without any

additional safeguards, risking the chance of surveillance, or pursuing stories that are of less interest to the government. These mechanisms essentially raise the cost of reporting by forcing journalists and sources to take extra time and invest in extra resources to protect communications.

The fact that some journalists and sources are, indeed, adopting tools to continue reporting despite ongoing monitoring does not suggest that surveillance of the press is harmless; rather, a cognizable injury arises simply because communications between journalists and their sources are chilled. *Cf. Donohue v. Duling*, 465 F.2d 196, 202 (4th Cir. 1972) (finding that plaintiffs lacked standing where they were “undeterred by any action by the defendants” and offered no testimony “of any inhibiting of their own exercise of the rights of free speech, of any penalty imposed on them which could be attributed to their exercise of their First Amendment rights, of any loss of employment or even reasonably foreseeable threat of such, of any threat of prosecution, or specific, identifiable civil sanction”).

II. Upstream surveillance harms the press by permitting widespread searches without adequate protections.

As PCLOB recognized in its Report, the upstream program implicates important Fourth Amendment interests “of the U.S. persons whose communications may be acquired despite not themselves having been targeted for surveillance.” PCLOB Report at 87. In particular, the collection of communications “about” a particular target in upstream surveillance, which has

significant implications for reporters and news media organizations, is “close to the line of constitutional reasonableness.” *Id.* at 88. This Court should therefore consider the First Amendment interests implicated by the absence of adequate Fourth Amendment safeguards.

A. The Fourth Amendment is rooted in concerns about safeguarding the press from general warrants.

The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const, amend. IV. This prohibition on unreasonable searches of “papers” arose from a long list of abusive practices in the colonial era, many of which targeted printers and publishers of dissenting publications. As a result, the Fourth Amendment’s roots are intertwined with the First Amendment guarantees of free speech and a free press. Indeed, the history of the Fourth Amendment is “largely a history of conflict between the Crown and the press.” *Stanford v. Texas*, 379 U.S. 476, 482 (1965).

The pre-revolutionary practice of issuing “general warrants,” which allowed law enforcement to search “private houses for the discovery and seizure of books and papers that might be used to convict their owner of the charge of libel,” was particularly odious to the press and to the Framers. *Boyd v. United States*, 116 U.S. 616, 626 (1886). The two colonial-era landmark cases that inform our understanding of the history and purpose of the Fourth Amendment—*Entick v.*

Carrington and Wilkes v. Wood—both involved the press.

In *Entick v. Carrington*, the British Secretary of State issued a general warrant for Entick, a writer for a dissenting publication, and his papers. The King’s messengers ransacked Entick’s house to find seditious material that was to be brought before the secretary of state. 19 How. St. Tr. 1029 (1765). Lord Camden decried the general warrant, writing of Entick, “His house is rifled; his most valuable secrets are taken out of his possession, before the paper for which he is charged is found to be criminal by any competent jurisdiction, and before he is convicted either of writing, publishing, or being concerned in the paper.” *Id.* at 1064. Lord Camden dismissed the contention that “this power is essential to government, and the only means of quieting clamors and sedition.” *Id.* He reviewed the long history of the Star Chamber’s persecution of the press and the dangers that general warrants continued to pose and concluded that the general warrant could not stand. *Id.*

Similarly, in *Wilkes v. Wood*, Lord Camden also dismissed a general warrant issued against a dissenting printer, concluding that the “discretionary power given to messengers to search wherever their suspicions may chance to fall” was “totally subversive of the liberty of the subject.” 19 How. St. Tr. 1153, 1167 (1763). In short, “[t]he Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for

stifling liberty of expression,” *Marcus v. Search Warrant*, 367 U.S. 717, 729 (1961), and for undermining freedom of the press.

B. Fourth Amendment protections must be rigorously applied when First Amendment rights are at stake.

Because of the historic link between the First and Fourth Amendments, the Supreme Court has found that where materials to be searched or seized “*may be protected by the First Amendment*,” the requirements of the Fourth Amendment must be applied with ‘scrupulous exactitude.’” *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1979) (emphasis added). Indeed, *Zurcher* expressly calls for “consideration of First Amendment values in issuing search warrants.” *Id.* at 565.

The *Zurcher* Court concluded that the Fourth Amendment’s warrant requirements were sufficiently protective of First Amendment rights. *Id.* at 567. Specifically, the Court stated that “[p]roperly administered, the preconditions for a warrant—probable cause, specificity with respect to the place to be searched and the things to be seized, and overall reasonableness—should afford sufficient protection against the harms that are assertedly threatened by warrants for searching newspaper offices.” *Id.* at 565.

The Fourth Amendment’s requirements reflect the Framers’ recognition that government searches and seizures can stifle expression and dissent. Thus, as the Supreme Court has stated in discussing the Fourth Amendment’s probable cause requirement for a warrant: “No less a standard could be faithful to First

Amendment freedoms.” *Stanford v. State of Tex.*, 379 U.S. 476, 485 (1965).

C. Section 702 permits searches and seizures of journalists’ documentary materials and work product in violation of the Privacy Protection Act.

In 1980, Congress responded to the ruling in *Zurcher* by passing the Privacy Protection Act (“PPA”), 42 U.S.C. § 2000aa, which made it unlawful for law enforcement to “search for or seize” work product and documentary materials “possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication.” Under the PPA, it is permissible to conduct such searches when “there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate.” *Id.*

Upstream surveillance under Section 702 allows the government to capture and keep domestic communications that include references to “selector” information relating to a foreign person under surveillance. PCLOB Report at 7. Consequently, upstream surveillance is akin to opening citizens’ mail whenever they write messages that discuss a certain subject. *Id.* at 122 (“From a legal standpoint, under the Fourth Amendment the government may not, without a warrant, open and read letters sent through the mail in order to acquire those that contain particular information.”). Just as reading citizens’ mail would be a gross invasion of citizens’ privacy, so the government’s ability to read the content of reporters’ emails intrudes on important constitutional and statutory protections.

As a result, when the government searches or seizes journalists' communications records under Section 702, it violates the PPA. Although the Foreign Intelligence Surveillance Act was ostensibly meant to give the government leeway to surveil foreign parties, upstream surveillance also allows the government to surveil news agencies whenever they discuss foreign parties the government has decided to investigate. But because FISA only requires the government to inform parties of information gleaned through upstream surveillance when that information will be used against those parties in adversary process, Section 702 enables the government to obtain a reporter's emails about a third party without notifying the reporter. *See, e.g.*, 50 U.S.C. § 1806(c).

Secret acquisition of communications records makes it impossible for reporters to mount a traditional legal defense to government intrusions into press autonomy by eliminating any opportunity to challenge or attempt to quash these requests. As a result, journalists have no opportunity to assert their First Amendment rights when their records are obtained via Section 702 surveillance. The fact that the search is secret deprives journalists, reporters, and media organizations of a forum in which to raise First Amendment or statutory arguments about the propriety of the surveillance. Nor is it true that secret surveillance, as a matter of law, does no legally cognizable harm to First Amendment rights. *See Hassan v. City of New York*, 804 F.3d 277, 292 (3rd Cir. 2015), as amended (Feb.

2, 2016) (“*Laird* doesn’t stand for the proposition that public surveillance is either per se immune from constitutional attack or subject to a heightened requirement of injury.”).

As a result, a reporter whose communications are acquired through upstream surveillance will likely never be notified of the acquisition. This practice runs counter to other mechanisms that protect journalists and reporters from searches and seizures without notice. For example, the Department of Justice’s policy with regard to the issuance of subpoenas to members of the news media, subpoenas for telephone toll records of members of the news media, and the interrogation, indictment, or arrest of, members of the news media, provides that certain law enforcement tools may be used to target news media only when “the information sought is essential to a successful investigation, prosecution, or litigation,” and after the government has given notice to and pursued negotiations with the targeted reporter. 28 C.F.R. § 50.10(a)(3).

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully urge this Court to reverse.

Dated: February 24, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2016, an electronic copy of the foregoing brief was filed with the Clerk of Court for the United States Court of Appeals for the Fourth Circuit using the Court's CM/ECF system and was served electronically by the Notice of Docket Activity upon all parties in the case. I certify that all participants in the case are CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-face and volume limitations set forth in Fed. R. of App. P. 32(a)(7)(B) as follows: The type face is fourteen-point Times New Roman font, and the word count is 4,013, excluding the portions of the brief exempted by Rule 32(a)(7)(B)(iii).

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APPENDIX A: DESCRIPTIONS OF *AMICI*

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided assistance and research in First Amendment and Freedom of Information Act litigation since 1970.

The Thomas Jefferson Center for the Protection of Free Expression is a nonprofit, nonpartisan organization located in Charlottesville, Virginia. Founded in 1990, the Center has as its sole mission the protection of free speech and press. The Center has pursued that mission in various forms, including the filing of *amici curiae* briefs in this and other federal courts, and in state courts around the country.

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.

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.

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.

Free Press is a national, nonpartisan, non-profit organization with approximately one million members in the United States and around the world. It works to defend Internet freedom and press freedom, including the right of journalists and others to gather and report on information as well as the public’s right to see, hear and read that information — both of which are crucial to a

functioning democracy. Free Press has participated in numerous court and agency proceedings on media, telecommunications, and technology law topics, including those involving First Amendment issues, since the organization's founding in 2003.

Freedom of the Press Foundation is a non-profit organization that supports and defends public-interest journalism focused on transparency and accountability. The organization works to preserve and strengthen First and Fourth Amendment rights guaranteed to the press through a variety of avenues, including public advocacy, legal advocacy, the promotion of digital security tools, and crowd-funding.

GateHouse Media is a preeminent provider of print and digital local content and advertising in small and midsize markets. Our portfolio of products, which includes 404 community publications and more than 350 related websites and six yellow page directories, serves over 128,000 business advertising accounts and reaches approximately 10 million people on a weekly basis.

The International Documentary Association (IDA) is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

Investigative Reporters and Editors, Inc. is a grassroots nonprofit organization dedicated to improving the quality of investigative reporting. IRE was

formed in 1975 to create a forum in which journalists throughout the world could help each other by sharing story ideas, newsgathering techniques and news sources.

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 Media Consortium is a network of the country's leading, progressive, independent media outlets. Our mission is to amplify independent media's voice, increase our collective clout, leverage our current audience and reach new ones.

The National Press Photographers Association ("NPPA") is a 501(c)(6) nonprofit 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.

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.

Reporters Without Borders has been fighting censorship and supporting and protecting journalists since 1985. Activities are carried out on five continents through its network of over 150 correspondents, its national sections, and its close collaboration with local and regional press freedom groups. Reporters Without Borders currently has 10 offices and sections worldwide.

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.

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