

No. 129886

IN THE SUPREME COURT OF ILLINOIS

EDGAR COUNTY WATCHDOGS,

Petitioner/Appellant

vs.

THE WILL COUNTY SHERIFF'S OFFICE,

Respondent/Appellee

On appeal from the Appellate Court of Illinois,
Third District, No. 3-21-0058
There heard on appeal from the Circuit Court of Will County, Illinois
No. 19-CH-1583
Honorable John C. Anderson, Judge Presiding

**MOTION OF PROPOSED AMICI CURIAE
REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 17
NEWS MEDIA ORGANIZATIONS FOR LEAVE TO FILE AMICI BRIEF IN
SUPPORT OF THE EDGAR COUNTY WATCHDOGS' PETITION FOR LEAVE
TO APPEAL**

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Pursuant to Illinois Supreme Court Rule 345, the Reporters Committee for Freedom of the Press (the “Reporters Committee”) and 17 news media organizations (collectively, “Amici”) move for leave to file the attached brief in support of the Edgar County Watchdogs’ Petition for Leave to Appeal. The Edgar County Watchdogs consent to the filing of this amici brief; the Will County Sheriff’s Office has not provided its position on consent. In support of this motion, Amici state as follows:

1. This Court has authority to accept briefs of amici curiae, which it grants in its discretion. *See* Ill. Sup. Ct. R. 345(a); *see also Kinkel v. Cingular Wireless, L.L.C.*, No. 100925, 2006 WL 8458036, at *1 (Ill. Jan. 11, 2006); *Lakewood Nursing & Rehab. Ctr., LLC v. Dep’t of Pub. Health*, 2019 IL 124019, ¶ 12; *Karas v. Strevell*, 227 Ill. 2d 440, 450 (2008) (noting grants of amicus briefs). A motion for leave to file an amicus brief must identify the interest of the applicant and explain how it will assist the Court. Ill. Sup. Ct. R. 345(a).

Statement of Amici’s interest:

2. Amicus 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.

3. Additional amici include Illinois-based and national news media organizations, publishers, and other organizations dedicated to defending the freedom of information and newsgathering rights of journalists, including on issues related to crime, law enforcement, and the justice system. As described in the attached Appendix, those

amici are: The Associated Press, Better Government Association, Chicago Public Media, Chicago Sun-Times, Chicago Tribune Company LLC, Illinois Broadcasters Association, Illinois Press Association, Injustice Watch, The Media Institute, National Freedom of Information Coalition, National Press Club Journalism Institute, The National Press Club, National Press Photographers Association, News/Media Alliance, Pro Publica, Inc., Society of Professional Journalists, and the Tully Center for Free Speech.

4. As such, Amici have a strong interest in the outcome of this case, which concerns the right of access to important law enforcement records—namely—audio recordings of 911 calls. Members of the press rely on public records laws like Illinois’ Freedom of Information Act, 5 ILCS 140/1 *et seq.*, to obtain information on the conduct of government actors, including police officers and 911 dispatch personnel, to educate the public about issues bearing directly on their communities. Access to and reporting on such information allows for informed discourse about matters of public concern, which is essential to a robust democracy. *See, e.g., Rushton v. Dep’t of Corr.*, 2019 IL 124552, ¶ 23; *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980) (“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”).

Amici’s brief will assist the Court in its resolution of this matter:

5. Amici submit this motion and accompanying brief in order to highlight the news media’s unique role and interest in government agencies’ leveraging modern technology to ensure public and press access to these important audio-visual records. Amici’s brief draws upon their frequent use of freedom of information laws to obtain public records and their practical experience gathering and reporting the news. Specifically,

Amici’s brief discusses how jurisdictions across the nation have addressed redaction of audio-visual records requested under public records laws in light of advances in technology, Br. of Amici Curiae Reporters Committee for Freedom of the Press and 17 News Media Organizations in Support of the Edgar County Watchdogs’ Petition for Leave to Appeal (“Amici Br.”) at 2–6; explains how members of the news media, and by extension, the public at large, benefit from access to public records subject to disclosure under freedom of information laws, Amici Br. at 8–11; and discusses the “important role in the discussion of public affairs” that members of the news media are able to fulfill when they have access to government records—including, specifically, 911 call recordings like those at issue here, *Mills v. Alabama*, 384 U.S. 214, 219 (1966). Amici respectfully submit that the perspective provided in their brief will aid the Court in its resolution of this important case.

WHEREFORE, Amici respectfully request that the Court grant leave to file the attached amici brief.

Dated: July 27, 2023

Respectfully submitted,

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APPENDIX

LIST OF AMICI

The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP’s content can reach more than half of the world’s population.

The Better Government Association is a non-partisan, nonprofit news organization and civic advocate working for transparency, efficiency and accountability in government in Chicago and across Illinois.

Chicago Public Media, Inc. is a not-for-profit public broadcasting company that operates WBEZ 91.5 FM Chicago, which is an NPR news station that provides local news coverage to its radio audience and to users of wbez.org and produces internationally known podcasts.

Sun-Times Media, LLC d/b/a the Chicago Sun-Times Newspaper publishes the Chicago Sun-Times, a newspaper formed in 1948 from the merger of the Chicago Sun and Chicago Daily Times, that is circulated throughout the City of Chicago and suburbs as well as related news websites in the internet. The newspaper has won eight Pulitzer Prizes and has a tradition of fostering in-depth investigative reporting regarding issues of local and regional interest. Consequently, the freedom of speech and the press in Illinois is a core interest of the Sun-Times, and it seeks to participate as amicus curiae to defend important First Amendment free speech principles.

Chicago Tribune Company, LLC publishes the Chicago Tribune, one of the largest daily newspapers in the United States. Its popular news and information website, www.chicagotribune.com, attracts a national audience.

The Illinois Broadcasters Association (“IBA”) is the leading advocate for the Illinois broadcast industry and is actively engaged in shaping public policy to create positive legal and regulatory environments for its radio and television station members. For over 60 years, the IBA has been Illinois’ sole trade association providing broadcast news, advertising and content to metropolitan areas and rural communities alike.

The Illinois Press Association (“IPA”) is the largest state press organization in the United States. Founded in 1865 near the end of the Civil War, the IPA’s members include nearly all of the more than 450-plus newspapers in Illinois. Throughout its long history, the IPA has been dedicated to promoting and protecting the First Amendment interests of newspapers and citizens before the Illinois legislature and Illinois courts.

Injustice Watch is an award-winning, not-for-profit journalism organization that conducts in-depth investigative research exposing institutional failures that obstruct justice and equality, and publishes original reporting and commentary.

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

The National Freedom of Information Coalition is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the

District of Columbia. Through its programs and services and national member network, NFOIC promotes press freedom, litigation and legislative and administrative reforms that ensure open, transparent and accessible state and local governments and public institutions.

The National Press Club Journalism Institute is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life, empowering engaged citizens to shape democracy. The Institute promotes and defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

The National Press Club is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

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 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 News/Media Alliance represents news and media publishers, including nearly 2,000 diverse news and magazine publishers in the United States—from the largest news publishers and international outlets to hyperlocal news sources, from digital-only and digital-first to print news. Alliance members account for nearly 90% of the daily newspaper’s circulation in the United States. Since 2022, the Alliance is also the industry association for magazine media. It represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands, on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The Alliance diligently advocates for news organizations and magazine publishers on issues that affect them today.

Pro Publica, Inc. (“ProPublica”) is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer Prizes, most recently a 2020 prize for national reporting, the 2019 prize for feature writing, and the 2017 gold medal for public service. ProPublica is supported almost entirely by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations selected for maximum impact. ProPublica has extensive regional and local operations, including ProPublica Illinois, which began publishing in late 2017 and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer Prize for Local Reporting, an initiative with the Texas Tribune, which launched in March 2020, and a series of Local Reporting Network partnerships.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism

organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

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

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INTRODUCTION AND STATEMENT OF INTEREST

Amici are news media organizations, publishers, and groups dedicated to defending the freedom of information interests of the press and public.¹ Amici write to emphasize the importance of access to recordings of 911 calls under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (“FOIA” or the “Act”), which enables journalists and news organizations to report on matters of significant public concern and promote oversight of government agencies and officials.

Amici frequently rely on public records, including those obtained pursuant to FOIA, to report on police-community relations and to shed light on the conduct of law enforcement. Members of the news media, including Amici, play a vital role in fulfilling FOIA’s promise of “enabl[ing] the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments[,] and monitoring government to ensure that it is being conducted in the public interest.” 5 ILCS 140/1. As such, Amici have a strong interest in this case.

This Court should grant the Petition for Leave to Appeal and reverse the decision below, which incorrectly held that the requested 911 recordings are exempt from disclosure under FOIA based on the Will County Sheriff’s Office’s assertion that it does not have the ability to edit audio recordings to conceal the identity of a speaker. That ruling is in direct conflict with FOIA’s segregability requirement, *see* 5 ILCS 140/7(1), and with long-standing precedent of this Court, *see, e.g., Hamer v. Lentz*, 132 Ill. 2d 49, 56–57 (1989); *Bowie v. Evanston Cmty. Consol. Sch. Dist. No. 65*, 128 Ill. 2d 373, 382 (1989), as well as FOIA’s explicit mandate that a public body may *only* withhold records if it demonstrates

¹ A full list of Amici is provided in Appendix A to this brief.

by “clear and convincing evidence,” 5 ILCS 140/11(f), that they “fall within [a] claimed exception” to the Act, *Dumke v. City of Chicago*, 2013 IL App (1st) 121668, ¶ 16, 994 N.E.2d 573, 579 (citation omitted).

Access to the 911 records at issue in this case, in altered form to avoid disclosure of personally identifying information (“PII”), will enable members of the news media to analyze and report on issues of importance to Illinois’ communities, while concomitantly fostering accountability of institutions tasked with serving the public. Accordingly, for the reasons herein, Amici urge the Court to grant Petitioner’s Petition for Leave to Appeal seeking reversal of the decision below.

ARGUMENT

Illinois law recognizes that it is a “fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with th[e] Act.” 5 ILCS 140/1. To fulfill that obligation, government agencies are expected to leverage modern technology to maximize transparency, and nothing in the Act permits an agency to deny access to whole categories of public records—like 911 recordings—simply because it refuses to utilize commonplace, readily obtainable technology that would enable it to fulfill FOIA’s mandate. *See In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 25, 129 N.E.3d 1181, 1188 (“FOIA is to be liberally construed to achieve the goal of providing the public with easy access to government information. Consequently, FOIA’s exceptions to disclosure are to be construed narrowly so as not to defeat the intended statutory purpose.” (citation omitted)). Respondent’s refusal to obtain and use basic audio editing technology to enable the redaction of public records contravenes FOIA’s principles of openness, efficiency, and expediency.

I. Agencies' implementation of the Act must keep pace with evolving technology.

As technology evolves, it is paramount that public records laws—and agencies' implementation of those laws—keep pace in order to ensure that “governmental records” are open “to the light of public scrutiny.” *Stern v. Wheaton-Warrenville Cmty. Unit Sch. Dist.* 200, 233 Ill. 2d 396, 405 (2009) (quoting *Bowie*, 128 Ill. 2d at 378). By its terms, FOIA must “be interpreted to promote the public’s access to information, even when applied in situations where advances in communication technology may outpace the terms of FOIA,” in light of “the goals of governmental transparency and accountability underlying” the Act. *Better Gov’t Ass’n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 20, 169 N.E.3d 1066, 1073 (citing 5 ILCS 140/1). Indeed, in an apt application of that requirement, this Court held *in the 1980s* that, “in order to provide plaintiff with the requested information” a public body would have to “develop a special computer program which would delete exempt information.” *Hamer*, 132 Ill. 2d at 56 (citing *Family Life League v. Dep’t of Pub. Aid*, 112 Ill. 2d 449 (1986)).

Courts around the country have recognized and affirmed the principle that this Court recognized and put into practice years ago. *See, e.g., Johnson v. City of Pineville*, 2008-1234, p. 7 (La. App. 3 Cir. 4/8/09), 9 So. 3d 313, 318 (“As technology has advanced, it has become necessary for the courts of this state to reiterate, in various ways, just how strong the public’s right of access to public records is.”); *Nissen v. Pierce Cnty.*, 183 Wash. 2d 863, 885, 357 P.3d 45, 57 (2015) (“Though technology evolves, segregating public records from nonpublic ones is nothing new for agencies responding to a [public records] request.”).

State and federal courts as well as state legislatures around the country have specifically addressed using technology to redact or obscure PII in audio-visual files. In New York, for instance, one court discussed how the New York Police Department (“NYPD”) “neglected to update its technology during the procurement process for [body worn cameras]. The NYPD essentially took the position that . . . it could deny such a request on the basis of having to rely on outdated software.” *Time Warner Cable News NYI v. N.Y.C. Police Dep’t*, 53 Misc. 3d 657, 674–75, 36 N.Y.S.3d 579, 594 (N.Y. Cnty. Sup. Ct. 2016), *on reargument*, No. 150305/2016, 2017 WL 1354833 (N.Y. Sup. Ct. Apr. 7, 2017). The court soundly rejected that position as “untenable[,]” *id.* at 675, and admonished that “[t]he NYPD cannot intentionally fail to update its technology during the procurement process for the BWC program and simultaneously rely on outdated software as the reason to deny a FOIL request.” *Id.*

The Pennsylvania Supreme Court recently rejected an agency official’s averment that it lacked capacity to redact school bus surveillance footage in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (“FERPA”). *See Cent. Dauphin Sch. Dist. v. Hawkins*, 286 A.3d 726, 742–43 (Pa. 2022). Notwithstanding an “unrefuted” affidavit and testimony from the government maintaining it lacked the technological capacity to redact the footage, the court ordered its redaction and the disclosure of the non-exempt portions. *See id.* (finding the agency official’s testimony “unavailing”).

The California Supreme Court, too, has expressly recognized the need for public records access to keep pace with developments in technology. As it explained in a recent case involving fees chargeable to a requester under the California Public Records Act,

“redactions that count as ‘extraction’ today may not count as ‘extraction’ tomorrow[.]” *Nat’l Laws. Guild v. City of Hayward*, 9 Cal. 5th 488, 501, 464 P.3d 594, 603 (2020), because, while the audio-visual redaction at issue in that case “might have required special effort in 2015, advances in technology” necessarily render such “redaction more routine and thus not chargeable as data extraction costs,” *see id.* California’s legislature, too, has explicitly referenced that audio editing technology may be employed to withhold PII from audio-visual files of law enforcement agencies:

If the agency demonstrates . . . that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would . . . violate the reasonable expectation of privacy of a subject depicted in the recording, the agency . . . may use redaction technology, including blurring or distorting images or audio[.]

Cal. Gov’t Code § 7923.625(b)(1).

And, just last year, when a Kentucky newspaper was denied access to, *inter alia*, 911 calls and dispatch communication, the Kentucky appellate court was “troubled” by the police department’s attempt to “categorically ban disclosure of all investigatory” records, contrary to the intent of the general assembly, *Courier-J., Inc. v. Shively Police Dep’t*, No. 2021-CA-1120-MR, 2022 WL 16842295, at *7 (Ky. Ct. App. Nov. 10, 2022). As the court of appeals explained, “there may be ways to limit rather than wholly exclude the release of the records sought so as to address any reasonable concerns,” such as “blurring portions of video that show [witnesses’] faces, and possibly altering their voices,” *id.*

Federal courts also have recognized that because editing of audio-visual material to satisfy public records requests “is routine and inexpensive, an agency cannot credibly claim that it lacks access to this technology.” *Stahl v. Dep’t of Justice*, No. 19-CV-4142 (BMC), 2021 WL 1163154, at *7 (E.D.N.Y. Mar. 26, 2021); *see id.* (“[I]f acquiring this software

could stand in the way of complying FOIA, no video would ever be disclosed.”); *see also* *Tunnell v. Dep’t of Def.*, No. 1:14-CV-00269-SLC, 2016 WL 5724431, at *3 (N.D. Ind. Sept. 30, 2016) (proposing “to blur the names and faces and to alter the voices of individuals appearing in the [requested] videos so that the names and identities of all military personnel are withheld”); *Evans v. Fed. Bureau of Prisons*, 951 F.3d 578, 587 (D.C. Cir. 2020) (“[T]eenagers who regale each other with screenshots are commonly known to revise those missives by such techniques as inserting cat faces over the visages of humans. While we do not necessarily advocate that specific technique, . . . the government is required to explain why the possibility of some similar method of segregability is unavailable[.]”).

In short, both federal and state courts have repeatedly recognized that government agencies cannot turn a blind eye to advances in technology that enable them to readily and easily fulfill their obligations under public records laws. Technological changes in how government agencies create and store public records necessarily require corresponding technological changes in how government agencies fulfill their transparency obligations to the public.

II. Free, user-friendly audio editing tools are readily available; a government agency cannot deny public access to audio files by claiming it lacks such technology.

Audio and other digital content editing is so ubiquitous that it beggars belief that any government entity would claim it lacks such technology. For example, in 2020, the U.S. Court of Appeals for the District of Columbia Circuit chided the Federal Bureau of Prisons for claiming it could not release any part of a surveillance video, noting that “we live in an era in which teenagers regularly send each other screenshots from all sorts of video media[.]” and that “[p]resumably, most of these teenagers have fewer resources than

the United States government.” *Evans*, 951 F.3d at 587. Government agencies have no excuse for being blind—willfully or otherwise—to the existence of modern technology, especially when something as fundamental as the public’s right to access public records under FOIA is at stake.

In this case, although Respondent “averred that the Sheriff’s Office ‘does not have the ability to scramble or disguise audio recordings so as to protect the identity of a speaker,’” *Edgar Cnty. Watchdogs v. Will Cnty. Sheriff’s Off.*, 2023 IL App (3d) 210058, ¶ 27, that claim is difficult to take seriously given the multitude of widely available, free, and efficient audio-editing software and services. If FOIA contemplates the development of “a special computer program” to comply with a valid request, *Hamer*, 132 Ill. 2d at 56, it is beyond peradventure that a public body cannot blind itself to the ready availability of such off-the-shelf audio redaction technology. The Third District erred in accepting Respondent’s assertions without question and failing to even consider the obvious technological solution. *Cf. People v. Davis*, 65 Ill. 2d 157, 165, 357 N.E.2d 792, 794 (1976) (discussing judicial notice of facts that are readily verifiable).

For example, Audacity is a popular, free, open-source audio editor. *See generally* Audacity, <https://www.audacityteam.org> (last accessed July 25, 2023). Its software can be used on virtually any operating system to, *inter alia*, edit a wide variety of different sound files; cut, copy, splice or mix sounds together; and change the speed, pitch, or tempo of a recording. *See, e.g.*, Kyle Davies, *Audacity How to Change Voice*, YouTube (Mar. 21, 2023), <https://www.youtube.com/watch?v=qPhWyoC2KHQ> (tutorial showing how to apply filters to voices). Free Audio Editor is another free tool that allows users on Windows or Mac to, *inter alia*, take advantage of over 30 different effects—including pitch

shifting—to significantly increase audio processing capabilities. *See generally* Free Audio Editor, <https://free-audio-editor.com> (last accessed July 25, 2023). And NCH Software has a free audio editor for Windows and Mac that allows a user to utilize thousands of tools and effects, including pitch shifting, and supports almost all audio and music file formats including MP3, WAV, VOX, GSM, WMA, AU, AIF, FLAC, real audio, OGG, AAC, M4A, MID, AMR, and many more. *See generally* NCH Software, <https://www.nch.com.au/wavepad/index.html> (last accessed July 25, 2023). It even allows the user to “search and bookmark audio for precise editing,” and “[c]reate bookmarks and regions to easily find, recall and assemble segments of long audio files.” *Id.*

These are just a few of the many tools available to Respondent, at no cost, that would enable it to easily comply with its redaction obligations under FOIA. The court below erred in failing to take account of such technology, and Petitioner’s Petition for Leave to Appeal should be granted to correct that error.

III. Members of the news media rely on access to 911 call recordings to inform the public about matters of immense public concern.

Illinois’ strong public policy favoring public access to government records—including law enforcement records—is clear. 5 ILCS 140/1. And members of the news media, including Amici, know first-hand the concrete benefits to the public from access to 911 call records like those at issue in this case.

For example, the nonprofit news outlet ProPublica recently reported on the junk science of so-called 911 call analysis, and how widely the practice of assessing a caller’s word choice, or even their grammar, is used by police departments as a means to determine the guilt or innocence of individuals reporting a crime—despite the fact that the methods, first introduced by Tracy Harpster in 2008, are demonstrably unreliable. Brett Murphy,

They Called 911 for Help. Police and Prosecutors Used a New Junk Science to Decide They Were Liars, ProPublica (Dec. 28, 2022), <https://www.propublica.org/article/911-call-analysis-fbi-police-courts>. “[R]esearchers who have tried to corroborate Harpster’s claims have failed. The experts most familiar with his work warn that it shouldn’t be used to lock people up. Prosecutors know it’s junk science too. But that hasn’t stopped some from promoting his methods and even deploying 911 call analysis in court to win convictions.” *Id.* Harpster, over the last decade, has even taught a class in which he instructs that “certain indicators [are] correlated with guilt and others with innocence. For instance, ‘Huh?’ in response to a dispatcher’s question is an indicator of guilt So is an isolated ‘please.’” *Id.* ProPublica’s reporting contains samples of actual 911 calls that have been subject to Harpster’s methods—allowing members of the public to listen for themselves, and compare their own impressions of the calls with the supposed “indicators of guilt” that are routinely used by police departments but often deemed inadmissible in court due to their unreliability.

Similarly, FOX8, a television news station in New Orleans, recently obtained a 911 call recording in which a Spanish translator mishandled a call for help from a Spanish-speaking shooting victim. Andrés Fuentes, *911 interpreter violated protocols when Hispanic man called after he was shot, paralyzed in New Orleans*, FOX8 (Feb. 23, 2023), <https://www.fox8live.com/2023/02/23/911-interpreter-violated-protocols-after-new-orleans-emergency-call/>. Because its reporters had access to that recording, FOX8 was able to report that the translator had wrongly suggested to the 911 operator that the victim was lying about having been shot; in reality, the caller had been shot, and was severely disoriented as a result. *See id.* According to FOX8’s reporting, there were 5,396 911 calls

to the Orleans Parish Communication District in 2022 from non-English speaking callers, *id.*—making a news story like this one vital to ensuring that non-English speakers using emergency services are getting the same level of responsiveness and care as English speakers.

Agencies’ disclosure of “information like 911 calls and body camera footage as quickly as possible . . . ‘[is] how you promote trust in law enforcement [and] also how you prevent future tragedies.’” Lexi Churchill & William Melhado, *Judge says DPS must release documents related to Uvalde shooting response*, Texas Tribune (June 29, 2023), <https://www.texastribune.org/2023/06/29/uvalde-shooting-dps-records/> (statement of Laura Prather). That sentiment rings true in communities across the nation, including here, in Illinois. When ProPublica exposed the abuse of a resident housed at Choate Mental Health and Developmental Center, it reported on the contents of a 911 call wherein the patient—clearly in distress—desperately sought help while being taunted by an employee of the facility. Beth Hundsdorfer & Molly Parker, *Chilling Audio Provides Rare Glimpse Into Abuse at Troubled Illinois Residential Facility*, ProPublica (Oct. 10, 2022), <https://www.propublica.org/article/illinois-choate-mental-health-abuse-911-staff>.

Employees at the facility—which houses individuals with intellectual and developmental disabilities and mental illnesses, and exists under the auspices of the state’s Department of Human Services—undergo yearly training on abuse and neglect prevention, *see id.*; the released 911 call demonstrates that such trainings, while necessary, are not sufficient. When the public and the press have access to such records from public institutions tasked with serving society’s most vulnerable, it facilitates accountability and needed oversight. *See id.* (“[Gov.] J.B. Pritzker issued a warning to state workers: Put an end to ‘awful’

abuses or the state may be forced to shut the facility down.”). The decision of the Third District Appellate Court, below, undercuts the ability of journalists and news organizations to keep the public informed about the actions of government agencies and officials, including law enforcement.

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner’s Petition for Leave to Appeal, and ultimately reverse the decision of the Third District Appellate Court ruling that the 911 recordings in their only available form are exempt from disclosure, and that the Sheriff’s Office need not create a transcript of the 911 recordings or alter such recordings and provide those versions to Edgar County Watchdogs.

Respectfully submitted,

Dated: July 27, 2023

/s/ Natalie J. Spears

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RULE 341(c) CERTIFICATION

I certify that this brief, table of contents, and statement of points and authorities conforms to the requirements of Rules 341(a), (b) and(h)(1). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 3,669 words.

/s/ Natalie J. Spears

Natalie J. Spears

Counsel for Amici Curiae

-APPENDIX-

LIST OF AMICI

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

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

The Better Government Association is a non-partisan, nonprofit news organization and civic advocate working for transparency, efficiency and accountability in government in Chicago and across Illinois.

Chicago Public Media, Inc. is a not-for-profit public broadcasting company that operates WBEZ 91.5 FM Chicago, which is an NPR news station that provides local news coverage to its radio audience and to users of wbez.org and produces internationally known podcasts.

Sun-Times Media, LLC d/b/a the Chicago Sun-Times Newspaper publishes the Chicago Sun-Times, a newspaper formed in 1948 from the merger of the Chicago Sun and Chicago Daily Times, that is circulated throughout the City of Chicago and suburbs as well as related news websites in the internet. The newspaper has won eight Pulitzer Prizes and

has a tradition of fostering in-depth investigative reporting regarding issues of local and regional interest. Consequently, the freedom of speech and the press in Illinois is a core interest of the Sun-Times, and it seeks to participate as amicus curiae to defend important First Amendment free speech principles.

Chicago Tribune Company, LLC publishes the Chicago Tribune, one of the largest daily newspapers in the United States. Its popular news and information website, www.chicagotribune.com, attracts a national audience.

The Illinois Broadcasters Association (“IBA”) is the leading advocate for the Illinois broadcast industry and is actively engaged in shaping public policy to create positive legal and regulatory environments for its radio and television station members. For over 60 years, the IBA has been Illinois’ sole trade association providing broadcast news, advertising and content to metropolitan areas and rural communities alike.

The Illinois Press Association (“IPA”) is the largest state press organization in the United States. Founded in 1865 near the end of the Civil War, the IPA’s members include nearly all of the more than 450-plus newspapers in Illinois. Throughout its long history, the IPA has been dedicated to promoting and protecting the First Amendment interests of newspapers and citizens before the Illinois legislature and Illinois courts.

Injustice Watch is an award-winning, not-for-profit journalism organization that conducts in-depth investigative research exposing institutional failures that obstruct justice and equality, and publishes original reporting and commentary.

The Media Institute is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in

journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

The National Freedom of Information Coalition is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the District of Columbia. Through its programs and services and national member network, NFOIC promotes press freedom, litigation and legislative and administrative reforms that ensure open, transparent and accessible state and local governments and public institutions.

The National Press Club Journalism Institute is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life, empowering engaged citizens to shape democracy. The Institute promotes and defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

The National Press Club is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

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 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 News/Media Alliance represents news and media publishers, including nearly 2,000 diverse news and magazine publishers in the United States—from the largest news publishers and international outlets to hyperlocal news sources, from digital-only and digital-first to print news. Alliance members account for nearly 90% of the daily newspaper’s circulation in the United States. Since 2022, the Alliance is also the industry association for magazine media. It represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands, on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The Alliance diligently advocates for news organizations and magazine publishers on issues that affect them today.

Pro Publica, Inc. (“ProPublica”) is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer Prizes, most recently a 2020 prize for national reporting, the 2019 prize for feature writing, and the 2017 gold medal for public service. ProPublica is supported almost entirely by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations selected for maximum impact. ProPublica has extensive regional and local operations, including ProPublica Illinois, which began publishing in late 2017 and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer Prize for Local Reporting, an initiative with the

Texas Tribune, which launched in March 2020, and a series of Local Reporting Network partnerships.

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

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

No. 129886

IN THE SUPREME COURT OF ILLINOIS

EDGAR COUNTY WATCHDOGS,

Petitioner/Appellant

vs.

THE WILL COUNTY SHERIFF'S OFFICE,

Respondent/Appellee

On appeal from the Appellate Court of
Illinois, Third District, No. 3-21-0058

There heard on appeal from the Circuit
Court of Will County, Illinois, No. 19-CH-
1583

Honorable John C. Anderson, Judge
Presiding

[PROPOSED] ORDER

IT IS HEREBY ORDERED that the Motion of Reporters Committee for Freedom of the Press and 17 News Media Organizations for leave to file a brief as amici curiae in support of Petitioner is:

granted / denied

DATED: _____, 2023

No. 129886

IN THE SUPREME COURT OF ILLINOIS

EDGAR COUNTY WATCHDOGS,

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vs.

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On appeal from the Appellate Court of
Illinois, Third District, No. 3-21-0058There heard on appeal from the Circuit
Court of Will County, Illinois, No. 19-CH-
1583Honorable John C. Anderson, Judge
Presiding**NOTICE OF FILING**

TO: (SEE ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that on July 27, 2023, we electronically filed with the Clerk of the Supreme Court of Illinois the **Motion of Reporters Committee for Freedom of the Press and 17 News Media Organizations for Leave to File a Brief of Amici Curiae in Support of Petitioner, Edgar County Watchdogs, and Brief of Amici Curiae Reporters Committee for Freedom of the Press and 17 News Media Organizations in Support of Edgar County Watchdogs' Petition for Leave to Appeal** in this matter in accordance with Illinois Supreme Court Rules, a copy of which has been served upon you via the Court's electronic filing system and by email.

Dated: July 26, 2023

Respectfully submitted,

/s/ Natalie J. Spears

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CERTIFICATE OF SERVICE

I, Natalie J. Spears, an attorney, hereby certify that I have caused a true and correct copy of the foregoing **NOTICE OF FILING, PROPOSED ORDER, MOTION, AND BRIEF OF REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 17 NEWS MEDIA ORGANIZATIONS IN SUPPORT OF PETITIONER-APPELLANT, EDGAR COUNTY WATCHDOGS**, to be filed electronically with the Supreme Court of Illinois and served upon the following counsel of record, via the Supreme Court of Illinois' electronic filing system and via email, on this 27th day of July, 2023:

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Within five days of acceptance by the Court, the undersigned also states that she will cause thirteen copies of the Brief to be mailed with postage prepaid addressed to:

Clerk's Office - Springfield
 Supreme Court Building
 200 E. Capitol Avenue
 Springfield, Illinois 62701

Under penalties by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Notice of Filing and Certificate of Service are true and correct.

/s/ Natalie J. Spears
 Natalie J. Spears
Counsel for Amici Curiae