

No. 17-55036

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

JORGE ALEJANDRO ROJAS,

Plaintiff-Appellant,

v.

FEDERAL AVIATION ADMINISTRATION,

Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California, No. 2:15-cv-05811-CBM-SS

**BRIEF OF AMICUS CURIAE THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS AND 24 MEDIA ORGANIZATIONS IN
SUPPORT OF PLAINTIFF-APPELLANT**

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TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	v
TABLE OF AUTHORITIES.....	vi
STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE	1
SOURCE OF AUTHORITY TO FILE	3
FED. R. APP. P. 29(a)(4)(E) STATEMENT	4
INTRODUCTION AND SUMMARY OF ARGUMENT.....	5
ARGUMENT	7
I. The Supreme Court has repeatedly, including as recently as last year, underscored the importance of adhering to the Act’s plain text when interpreting FOIA’s exemptions.....	7
II. FOIA’s legislative history supports disclosure of the requested records.	10
III. The Federal Advisory Committee Act further demonstrates Congress’s intent that records generated in the scope of government’s relationship with outside consultants be accessible to the public.....	12
IV. The consultant corollary denies the public access to valuable records that illuminate government conduct.	14
CONCLUSION	17
APPENDIX A	18

TABLE OF AUTHORITIES

Cases

<i>Coastal States Gas Corp. v. Dep’t of Energy</i> , 617 F.2d 854 (D.C. Cir. 1980)	12
<i>EPA v. Mink</i> , 410 U.S. 73 (1973)	11
<i>Food Mktg. Inst. v. Argus Leader Media</i> , 139 S. Ct. 2356 (2019).....	5, 6, 7, 8
<i>Gov’t Land Bank v. Gen. Servs. Admin.</i> , 671 F.2d 663 (1st Cir. 1982)	9
<i>Hunton & Williams v. Dep’t of Justice</i> , 590 F.3d 272 (4th Cir. 2010).....	9
<i>Lead Indus. Ass’n, Inc. v. Occupational Safety & Health Admin.</i> , 610 F.2d 70 (2d Cir. 1979).....	9
<i>Milner v. Dep’t of Navy</i> , 562 U.S. 562 (2011)	7, 11, 12
<i>Nat’l Archives & Records Admin. v. Favish</i> , 541 U.S. 157 (2004).....	10
<i>Rojas v. Fed’l Aviation Admin.</i> , 927 F.3d 1046 (9th Cir. 2019)	5
<i>Rotkiske v. Klenn</i> , 140 S. Ct. 355 (2019).....	7
<i>Soucie v. David</i> , 448 F.2d 1067 (D.C. Cir. 1971)	8, 9
<i>Stewart v. U.S. Dep’t of Interior</i> , 554 F.3d 1236 (10th Cir. 2009)	9
<i>U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press</i> , 489 U.S. 749 (1989).....	10
<i>Wu v. Nat’l Endowment for Humanities</i> , 460 F.2d 1030 (5th Cir. 1972).....	9

Statutes

5 U.S.C. § 1002	11
5 U.S.C. § 552	5, 8
5 U.S.C.App. 2 § 10	13
7 U.S.C. § 2706.....	15
Pub. L. No. 92-463, 86 Stat. 770 (1972)	12
Pub. L. No. 93-502, 88 Stat. 1564 (1974),	8

Other Authorities

120 Cong. Rec. S19806–23 (daily ed. Nov. 21, 1974).....	11
121 Cong. Rec. S22729–30 (daily ed. Dec. 18, 1975).....	10
General Services Administration, <i>Appointment of Consultants to FACA</i> (Feb. 26, 2019), https://perma.cc/8UR6-NSVF	13

General Services Administration, *The Federal Advisory Committee Act Brochure* (Feb. 26, 2019), <https://perma.cc/FBR9-K7LR> 14

Geoffrey Mohan, *The Egg Industry Launched a Secret Two-Year War Against a Vegan Mayonnaise Competitor*, L.A. Times (Oct. 7, 2016, 2:15 PM), <https://perma.cc/N8VY-D7NE>..... 15

James L. Dean, *Memorandum for Committee Management Officers*, General Services Administration (March 14, 2000), <https://perma.cc/HL3D-YJXF>..... 13

Rich Saltzberg, *Coast Guard Releases West Chop Docs*, MV Times (Aug. 28, 2019), <https://perma.cc/MY4M-JVMM>..... 16

Rich Saltzberg, *West Chop Lead Didn't Stop USCG From Housing Families*, MV Times (Feb. 12, 2020), <https://perma.cc/Q6Y7-Z5KP>..... 16

S. 741, 115th Cong. (2017) 16

S. Rep. No. 89-813 (1965)..... 12

United States Department of Agriculture, *Summary of Allegations and Findings*, <https://perma.cc/K9SU-WE6Z> 15

Rules

Fed. R. App. P. 29 3

Cir. R. 29-2(a)..... 3

STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are the Reporters Committee for Freedom of the Press, ALM Media, LLC, The Associated Press, Association of Alternative Newsmedia, BuzzFeed, California News Publishers Association, The Daily Beast Company LLC, Dow Jones & Company, Inc., Gannett Co., Inc., International Documentary Assn., The Media Institute, MediaNews Group Inc., Mother Jones, MPA - The Association of Magazine Media, National Newspaper Association, National Press Club Journalism Institute, National Press Photographers Association, The New York Times Company, The News Leaders Association, Online News Association, Radio Television Digital News Association, Reveal from The Center for Investigative Reporting, Society of Environmental Journalists, Society of Professional Journalists, and Tully Center for Free Speech.¹ Lead amicus the Reporters Committee is an unincorporated nonprofit association 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.

¹ Full descriptions of the amici are included as Appendix A.

As members of the news media and organizations who advocate on behalf of journalists and the press, amici frequently rely on the Freedom of Information Act (“FOIA” or the “Act”) to gather information in order to report on matters of public concern. Accordingly, amici have a strong interest in ensuring that FOIA’s exemptions are properly interpreted in accordance with the Act’s text and its purpose, which is to illuminate government activity. Atextual interpretations of FOIA that expand the reach of the Act’s exemptions beyond what Congress intended, such as the so-called “consultant corollary,” are not only improper, but also threaten the news media’s ability to keep the public informed about government affairs.

SOURCE OF AUTHORITY TO FILE

Plaintiff-Appellant and Defendant-Appellee consent to the filing of this amicus brief. *See* Fed. R. App. P. 29(a)(2); Cir. R. 29-2(a).

FED. R. APP. P. 29(a)(4)(E) STATEMENT

Amici declare that:

1. no party's counsel authored the brief in whole or in part;
2. no party or party's counsel contributed money intended to fund preparing or submitting the brief; and
3. no person, other than amici, their members or their counsel, contributed money intended to fund preparing or submitting the brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Freedom of Information Act (“FOIA” or the “Act”) requires government agencies to provide certain categories of records to the public, unless the records fall within one or more of the Act’s specifically enumerated exemptions. 5 U.S.C. § 552, *et seq.* Courts “cannot properly *expand* [an exemption] beyond what its terms permit.” *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019) (emphasis in original). Yet some courts have nevertheless interpreted FOIA’s exemptions to allow agencies to withhold categories of records and information that go well beyond—and, indeed, are counter to—the Act’s text. Specifically, courts outside of the Ninth Circuit have impermissibly expanded FOIA’s Exemption 5 to treat documents of an agency’s third-party consultant as “intra-agency” memorandums, known as the “consultant corollary.”

The June 18, 2019 Opinion of a panel of this Court (“Opinion”), *Rojas v. Fed’l Aviation Admin.*, 927 F.3d 1046, 1050–51 (9th Cir. 2019) (ECF No. 44), correctly rejected the consultant corollary theory to hold that communications between Defendant-Appellee the Federal Aviation Administration (“FAA”) and a third-party consultant are not intra-agency communications that may be withheld under FOIA’s Exemption 5. The panel’s decision was correct; the plain language of FOIA, as well as the Act’s legislative history, compels that conclusion.

Amici agree with Plaintiff-Appellant Jorge Alejandro Rojas (“Rojas”) that FOIA’s text makes unequivocally clear that communications with consultants do not fall within the scope of Exemption 5. Additionally, FOIA’s legislative history underscores that such records fit squarely within the scope of what Congress intended to be disclosed under the Act. While the FAA claims Congress intended to include an agency’s communications with third-party consultants within the scope of Exemption 5, it does so by ignoring the Act’s plain text and engaging in a highly “selective tour of the legislative history,” *see Food Mktg. Inst.*, 139 S. Ct. at 2364, neither of which are proper methods of statutory interpretation.

The implications of this Circuit adopting the atextual theory urged by the FAA go well beyond the records at issue in this case. Reporters and news organizations often rely on FOIA to obtain public records that touch upon the work of agency consultants in order to inform the public about how the government conducts the public’s business. Rejecting the consultant corollary will keep records that shed light on government activity accessible to the public, enhancing the public’s understanding of how the government works.

For the reasons herein, amici urge the Court to reject the consultant corollary and reverse the district court’s order granting summary judgment in favor of the FAA.

ARGUMENT

I. The Supreme Court has repeatedly, including as recently as last year, underscored the importance of adhering to the Act’s plain text when interpreting FOIA’s exemptions.

While there is nothing novel about “begin[ning] by analyzing the statutory language,” *see Rotkiske v. Klenn*, 140 S. Ct. 355 (2019), the Supreme Court has repeatedly emphasized the importance of FOIA’s text when interpreting the scope of the Act’s enumerated exemptions. The Supreme Court has underscored this point in two recent cases interpreting the scope of FOIA’s exemptions, *Milner v. Dep’t of Navy*, 562 U.S. 562, 570, 572–73 (2011) and *Food Marketing Institute*, 139 S. Ct. at 2364. In *Food Marketing Institute*, the Supreme Court stated that, in interpreting FOIA’s exemptions, courts must start with “the ordinary meaning and structure of the law itself,” and if “that examination yields a clear answer, judges must stop.” *Id.* In *Milner*, the Court overturned the decisions of a number of federal Courts of Appeals that had adopted an atextual interpretation of Exemption 2,² noting that those decisions had focused on FOIA’s “overall design” and “common sense,” 562 U.S. at 566, but “comparatively little attention has focused on the provision’s 12 simple words,” *id.* at 569.

² The Court in *Milner* overturned decisions from the Courts of Appeals for the Second, Seventh, Ninth, and D.C. Circuits. *See Milner*, 562 U.S. at 567 n.2.

The Opinion below correctly held that the Act’s plain text makes clear that “*intra-agency*” or “*inter-agency*” records mean just that—records created by *agency* personnel sent within the *agency* or to or from another *agency*. See 5 U.S.C. § 552(f)(1) (defining “agency” as “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency”). Only through “casual disregard of the rules of statutory interpretation” can communications with third-party consultants fall within the scope of Exemption 5. *Food Mktg. Inst.*, 139 S. Ct. at 2364.

Unlike the Opinion below, no federal circuit court of appeals that has adopted the consultant corollary theory has meaningfully engaged with FOIA’s plain text. The U.S. Court of Appeals for the D.C. Circuit first applied the consultant corollary in *Soucie v. David*, at a time when FOIA did not yet define “agency.” 448 F.2d 1067, 1078 n.44 (D.C. Cir. 1971); see also Pub. L. No. 93-502, 88 Stat. 1564 (1974), available at <https://perma.cc/N5M6-VFX7> (adding definition of “agency” to FOIA).³ Instead, the D.C. Circuit based its creation of

³ In *Soucie*, the D.C. Circuit briefly discussed the Administrative Procedure Act’s definition of “agency” to hold that the Office of Science and Technology was an agency subject to FOIA. 448 F.2d at 1073. It did not base its adoption of the consultant corollary on this definition. *Id.* at 1078 n.44.

the consultant corollary on “[t]he rationale of the exemption for internal communications[,]” which it concluded “indicates that the exemption should be available . . . even if [the requested record] was prepared for an agency by outside experts.” *Soucie*, 448 F.2d at 1078 n.44. Other federal courts of appeals that have adopted the consultant corollary also did not meaningfully consider FOIA’s plain language; they either simply adopted the D.C. Circuit’s reasoning in *Soucie* or the issue was not contested by the parties. *See Hunton & Williams v. Dep’t of Justice*, 590 F.3d 272, 280 (4th Cir. 2010) (adopting the consultant corollary theory because cases recognizing it “make good sense”); *Stewart v. U.S. Dep’t of Interior*, 554 F.3d 1236, 1245 (10th Cir. 2009) (citing D.C. Circuit precedent in holding that paid consultants are akin to agency employees); *Gov’t Land Bank v. Gen. Servs. Admin.*, 671 F.2d 663, 666 (1st Cir. 1982) (“Both parties agree that a property appraisal, performed under contract by an independent professional, is an ‘intra-agency’ document for purposes of the exemption.”); *Lead Indus. Ass’n, Inc. v. Occupational Safety & Health Admin.*, 610 F.2d 70 (2d Cir. 1979) (adopting the consultant corollary and stating, “we have nothing that can usefully be added to Chief Judge Bazelon’s statement in [*Soucie*]”); *Wu v. Nat’l Endowment for Humanities*, 460 F.2d 1030, 1032 (5th Cir. 1972) (adopting *Soucie*’s reasoning that, for policy reasons, Exemption 5 “should be available” to external consultants).

Yet, particularly in the years since *Soucie* was decided, the Supreme Court has made it abundantly clear that the scope of FOIA's exemptions are limited by the text of the statute. The well-reasoned panel Opinion adhered strictly to the Act's text. The Court should adopt its reasoning and reject the consultant corollary.

II. FOIA's legislative history supports disclosure of the requested records.

Though the Court need not—and should not—look beyond the plain text of the Act to reject the consultant corollary, FOIA's legislative history also supports rejection of the consultant corollary. “[T]he statutory purpose [of FOIA]” is to ensure “that the public know what its government is up to.” *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004). The right of the people to know the operations and activities of their government “defines a structural necessity in a real democracy.” *Id.* at 171–72 (citing *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989)). These fundamental principles are, in part, drawn from the legislative history surrounding FOIA's enactment: “The government's business is the people's business. That is why we have no reservations about the public's right to know, with a minimum of restriction, what its Government is doing and why.” 121 Cong. Rec. S22729–30 (daily ed. Dec. 18, 1975) (statement of Sen. Kennedy).

The Supreme Court has recognized that in passing FOIA, Congress intended to change the status quo from the routine withholding of government records to broad disclosure. Specifically, as the Court has stated, “Congress enacted FOIA to overhaul the public-disclosure section of the Administrative Procedure Act (APA), 5 U.S.C. § 1002 (1964 ed.),” a provision “‘plagued with vague phrases’” that had “gradually [become] more ‘a withholding statute than a disclosure statute.’” *Milner v. Dep’t of Navy*, 562 U.S. 562, 565 (2011) (quoting *EPA v. Mink*, 410 U.S. 73, 79 (1973)). It is in light of this history that the Supreme Court has observed that FOIA’s exemptions are “explicitly made exclusive” and must be “narrowly construed.” *Mink*, 410 U.S. at 79.

Building upon the original goals motivating FOIA’s passage, in 1974 Congress strengthened the Act’s disclosure provisions. Congress reasoned:

Extensive hearings in both the House and Senate have brought out clearly the need to broaden and strengthen the 1966 Freedom of Information Act. Court construction of some loosely drafted provisions in the law have opened gaping loopholes which have engulfed entire buildings of Government files. Even where the law clearly and unambiguously requires disclosure of certain documents, bureaucratic sleights of hand continue to keep them out of reach of the public and the press.

120 Cong. Rec. S19806–23 (daily ed. Nov. 21, 1974) (statement of Sen. Kennedy).

Simply put, Congress, in amending FOIA in 1974, was wary of agencies taking advantage of “loosely drafted provisions” to circumvent the Act’s mandate of broad disclosure mandate. *Id.* And, as was the case in 1974, FOIA requesters

today, including many of amici, operate in a landscape wherein federal agencies seek to withhold records “even where the law clearly and unambiguously requires disclosure.” *Id.*

Here, the FAA speculates that adverse consequences may flow from disclosure of the records at issue. Yet “arguments about ‘upset[ting] . . . agency practice’ cannot justify disregarding the statutory text,” Resp. to Pet. at 19 (quoting *Milner*, 562 U.S. at 580). And, even if the statutory language could be read to allow for the existence of the consultant corollary, which it does not, in keeping with FOIA’s purpose, Exemption 5 must be applied “as narrowly as consistent with efficient Government operation[,]” which would preclude the consultant corollary. *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980) (quoting S. Rep. No. 89-813, at 9 (1965) (rejecting argument that disclosure of requested memoranda would harm “efficient Government operation”—the agency’s proffered concern—and ordering their release).

III. The Federal Advisory Committee Act further demonstrates Congress’s intent that records generated in the scope of government’s relationship with outside consultants be accessible to the public.

FOIA is not the only instance of Congress ensuring public access to information about the government’s relationship with consultants. Though not at issue here, the Federal Advisory Committee Act (“FACA”), Pub. L. No. 92-463, 86 Stat. 770 (1972), is further evidence of Congress’s intent to provide for public

scrutiny of the government’s relationship with third-party consultants; FACA mandates broad public access to records used or prepared by federal advisory committees, which necessarily include communications between government agencies and consultants. Section 10(b) of FACA requires that, subject to the parameters of FOIA, all “records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents” used or prepared by federal advisory committees must be made available to the public. 5 U.S.C.App. 2 § 10. The purpose of section 10(b) of FACA is to provide for the “contemporaneous availability of advisory committee records that . . . provide[s] a meaningful opportunity to fully comprehend the work undertaken by the committee.” James L. Dean, *Memorandum for Committee Management Officers*, General Services Administration (March 14, 2000), <https://perma.cc/HL3D-YJXF>.

The individuals and entities who serve on federal advisory committees serve in a role that is, by definition, consultative. *See* General Services Administration, *Appointment of Consultants to FACA* (Feb. 26, 2019), <https://perma.cc/8UR6-NSVF> (defining “consultant” as “a person who can provide valuable and pertinent advice generally drawn from a high degree of broad administrative, professional, or technical knowledge or experience”). Today, an average of 1,000 advisory committees with more than 60,000 members advise the executive branch on issues ranging from the disposal of nuclear waste and the depletion of atmospheric ozone

to the fight against AIDS—and countless other issue areas demanding attention, research, funding, and policy reform. General Services Administration, *The Federal Advisory Committee Act Brochure* (Feb. 26, 2019), <https://perma.cc/FBR9-K7LR>. That Congress *explicitly* makes the records of these advisory committees accessible to the public demonstrates a strong public policy in favor of public access to records born of the government’s relationship with outside consultants.

IV. The consultant corollary denies the public access to valuable records that illuminate government conduct.

Valuable reporting in service of the public interest has resulted from access, under FOIA, to information about the government’s relationship with outside consultants. The news media regularly relies on FOIA to access government records generated through agency relationships with third parties to inform the public about government misconduct, public health and welfare, and other newsworthy issues about which the public has a right to be informed.

For example, a federal investigation sparked by documents obtained via FOIA and reported on by the *Los Angeles Times* revealed unlawful, anticompetitive practices by the American Egg Board (“AEB”)⁴ against a private

⁴ The AEB is an industry-funded group overseen by the United States Department of Agriculture’s marketing branch. American Egg Board, *About the American Egg Board* (last visited Feb. 11, 2020), <https://perma.cc/78RW-U44D>.

food company—practices advanced in conjunction with the consulting firm Edelman. *See, e.g.*, Geoffrey Mohan, *The Egg Industry Launched a Secret Two-Year War Against a Vegan Mayonnaise Competitor*, L.A. Times (Oct. 7, 2016, 2:15 PM), <https://perma.cc/N8VY-D7NE>. According to reporting by the *Los Angeles Times*, between 2013 and 2015, the AEB spent over \$50,000 to combat the plant-based food company Hampton Creek,⁵ which the AEB believed threaten demand for eggs. *Id.* The AEB hired Edelman, a public relations consulting firm, to provide public relations services. United States Department of Agriculture, *Summary of Allegations and Findings*, <https://perma.cc/K9SU-WE6Z> (“USDA Summary”). In addition, the AEB approved an offer from consultant Anthony Zolezzi, who boasted that he could make “one phone call” and get Whole Foods to pull the plant-based product from its shelves. Mohan, *supra*. The Department of Agriculture later found the AEB’s activities unlawful, as targeting a specific company is not allowed under its Agricultural Marketing Service guidelines. USDA Summary; 7 U.S.C. § 2706(a) (explaining that activities must be “directed towards increasing the general demand” for eggs rather than aimed at disparaging specific competitors). In March 2017, Senators Cory Booker and Mike Lee introduced the Opportunities for Fairness in Farming Act of 2017 (OFF Act), in

⁵ Hampton Creek is now called JUST.

response to the AEB's conduct; the bill sought to increase transparency and accountability in the food industry. S. 741, 115th Cong. (2017).

In another example, *The Martha's Vineyard Times* used FOIA to report that the Coast Guard housed families at a facility in Tisbury, Massachusetts despite numerous indicators of pervasive lead contamination and failed to warn families of the danger. See Rich Saltzberg, *West Chop Lead Didn't Stop USCG From Housing Families*, MV Times (Feb. 12, 2020), <https://perma.cc/Q6Y7-Z5KP> (“*West Chop Lead*”); Rich Saltzberg, *Coast Guard Releases West Chop Docs*, MV Times (Aug. 28, 2019), <https://perma.cc/MY4M-JVMM>. *The Martha's Vineyard Times* engaged in “a protracted FOIA process” to obtain over 400 pages of records “related to lead, lead poisoning, lead mitigation, or lead analysis” at the housing unit. *West Chop Lead, supra*. Those records, along with a 19-page government report, revealed that a consultant for the Coast Guard concluded that the dwelling was “near to a lead-safe conduction” despite the presence of lead, and that grass was sufficient to shield against soil-borne lead. *Id.*

The Court must, therefore, reject the consultant corollary in order to keep these and similar records that shed light on government activity accessible to the public.

CONCLUSION

For the foregoing reasons, amici respectfully urge the Court to reject the consultant corollary and reverse the district court's order granting summary judgment in favor of the FAA.

Respectfully submitted,

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APPENDIX A

ALM Media, LLC publishes over 30 national and regional magazines and newspapers, including The American Lawyer, The National Law Journal, New York Law Journal and Corporate Counsel, as well as the website Law.com. Many of ALM's publications have long histories reporting on legal issues and serving their local legal communities. ALM's The Recorder, for example, has been published in northern California since 1877; New York Law Journal was begun a few years later, in 1888. ALM's publications have won numerous awards for their coverage of critical national and local legal stories, including many stories that have been later picked up by other national media.

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.

Association of Alternative Newsmedia ("AAN") is a not-for-profit trade association which represents nearly 100 alternative newspapers across North America. There are a wide range of publications in AAN, but all share an intense focus on local news, culture and the arts; an emphasis on point-of-view reporting

and narrative journalism; a tolerance for individual freedoms and social differences; and an eagerness to report on issues and communities that many mainstream media outlets ignore. AAN members speak truth to power.

BuzzFeed is a social news and entertainment company that provides shareable breaking news, original reporting, entertainment, and video across the social web to its global audience of more than 200 million.

The California News Publishers Association (“CNPA”) is a nonprofit trade association representing the interests of over 400 daily, weekly and student newspapers and news websites throughout California.

The Daily Beast delivers award-winning original reporting and sharp opinion from big personalities in the arenas of politics, pop-culture, world news and more.

Dow Jones & Company is the world's leading provider of news and business information. Through The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and its other publications, Dow Jones has produced journalism of unrivaled quality for more than 130 years and today has one of the world's largest newsgathering operations. Dow Jones's professional information services, including the Factiva news database and Dow Jones Risk & Compliance, ensure that businesses worldwide have the data and facts they need to make intelligent decisions. Dow Jones is a News Corp company.

Gannett is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states and Guam — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month.

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.

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.

MediaNews Group Inc. publishes the Mercury News, the East Bay Times, St. Paul Pioneer Press, The Denver Post, the Boston Herald and the Detroit News and other regional and community papers throughout the United States, as well as numerous related online news sites.

Mother Jones is a nonprofit, reader-supported news organization known for ground-breaking investigative and in-depth journalism on issues of national and global significance.

MPA – The Association of Magazine Media, (“MPA”) is the industry association for magazine media publishers. The MPA, established in 1919, represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands. MPA’s membership creates professionally researched and edited content across all print and digital media on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

National Newspaper Association is a 2,000 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Pensacola, FL.

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

The News Leaders Association was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

The Online News Association is the world's largest association of digital journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

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.

Reveal from The Center for Investigative Reporting, founded in 1977, is the nation’s oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website <https://www.revealnews.org/>, the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country.

The Society of Environmental Journalists is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

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.

CERTIFICATE OF SERVICE

I, Katie Townsend, do hereby certify that I have filed the foregoing Brief of Amicus Curiae electronically with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on March 5, 2020.

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

/s/ Katie Townsend
Katie Townsend, Esq.
Counsel of Record
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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