No. 22-35338

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JANE SULLIVAN *ET AL.*,

Plaintiffs-Appellees,

v.

THE UNIVERSITY OF WASHINGTON *ET AL.*,

Defendants-Appellees,

and

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC.,

Intervenor-Appellant.

On Appeal from the U.S. District Court for the
Western District of Washington at Seattle
Case No. 2:22-cv-00204-RAJ (Hon. Richard A. Jones)

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 16 MEDIA ORGANIZATIONS IN SUPPORT OF INTERVENOR-APPELLANT

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**Of Counsel*

The Reporters Committee for Freedom of the Press and 16 media organizations (collectively "amici") move for leave to file the attached proposed amici curiae brief in support of Intervenor-Appellant People for the Ethical Treatment of Animals ("PETA") pursuant to Federal Rules of Appellate Procedure 27 and 29.[1] Intervenor-Appellant and Defendants-Appellees consent to the filing of the amici brief. Plaintiffs-Appellees do not consent to the filing of the amici brief.

The proposed amici brief addresses matters "relevant to the disposition" of this appeal. Fed. R. App. P. 29(a)(3) (providing that a motion for leave to file an amicus brief during a court's initial consideration of a case on the merits must state "the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case"). Specifically, amici write to highlight for the Court the steps Congress has taken to mandate transparency with respect to similarly situated committees to the Institutional Animal Care and Use Committee of the University of Washington ("IACUC") at the federal level through the Federal Advisory Committee Act. Such transparency—including access to information about the identities of advisory committee members engaged in public business—is not only critical to the news media's ability to keep the public

[1] A list of all amici, a supplemental statement of identity and interest of amici, and corporate disclosure for all amici are included in the attached proposed amici brief.

informed, but also serves to guard against private-industry capture of committees constituted to serve the public's interests. It provides not only an important check on public institutions, but also a necessary mechanism for ensuring that committees tasked with making policy decisions or providing policy advice, particularly about controversial topics of public concern, are viewed as legitimate by the public.

As members of the news media and organizations who advocate on behalf of the press, the media coalition has a strong interest in safeguarding the right of access to records and ensuring that any exemptions to the disclosure requirements of Washington's Public Records Act are interpreted narrowly. The proposed brief will aid the Court by providing amici's informed perspective on these issues, which affect journalists and news organizations across the country.

As set forth in the proposed amici brief, the Court should reverse and vacate the district court's preliminary injunction barring the disclosure of IACUC members' appointment letters under Washington's Public Records Act. To hold otherwise would be contrary to analogous federal law and undermine the news media's ability to help ensure that public bodies are transparent and accountable.

For these reasons, amici respectfully request leave to file the attached proposed amici curiae brief in support of Intervenor-Appellant.

Dated: June 1, 2022

Respectfully submitted,

/s/ Katie Townsend
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**Of counsel*

CERTIFICATE OF SERVICE

I, Katie Townsend, do hereby certify that I have filed the foregoing Motion for Leave to File Brief of Amici 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 June 1, 2022.

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
Counsel of Record for Amici Curiae
THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

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CORPORATE DISCLOSURE STATEMENTS

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

Californians Aware is a nonprofit organization with no parent corporation and no stock.

The Center for Investigative Reporting (d/b/a Reveal) is a California non-profit public benefit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It has no statutory members and no stock.

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

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

Fundamedios Inc. is a non-profit corporation organized under the laws of Massachusetts, with no parent corporation and no stock.

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

The Media Institute is a 501(c)(3) non-stock corporation with no parent corporation.

The National Freedom of Information Coalition is a nonprofit organization that has not issued any shares or debt securities to the public, and has no parent companies, subsidiaries, or affiliates that have issued any shares or debt securities to the public.

The National Press Club Journalism Institute is a not-for-profit corporation that has no parent company and issues no stock.

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

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

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

The Society of Environmental Journalists is a 501(c)(3) non-profit educational organization. It has no parent corporation and issues no stock.

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

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

The Tully Center for Free Speech is a subsidiary of Syracuse University.

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Amici are the Reporters Committee for Freedom of the Press, Californians Aware, The Center for Investigative Reporting (d/b/a Reveal), The E.W. Scripps Company, First Amendment Coalition, Fundamedios Inc., Investigative Reporting Workshop at American University, The Media Institute, National Freedom of Information Coalition, National Press Club Journalism Institute, National Press Photographers Association, Radio Television Digital News Association, The Seattle Times Company, Society of Environmental Journalists, Society of Professional Journalists, Student Press Law Center, and the Tully Center for Free Speech. (collectively "amici"). A supplemental statement of identity and interest of amici curiae is included below as Appendix A.

As members of the news media and organizations who advocate on behalf of journalists and the press, amici have a strong interest in safeguarding the right of access to records concerning public business embodied in Washington's Public Records Act (the "Act"), Wash. Rev. Code §§ 42.56.001–42.56.904, and ensuring that any exemptions to the Act's disclosure requirements are interpreted narrowly, Wash. Rev. Code § 42.56.030. Amici write to emphasize the importance of transparency regarding the makeup of public bodies that address issues of significant public concern. Access to information about the identities of advisory committee members engaged in public business is not only critical to the news

media's ability to keep the public informed, but also serves to guard against private-industry capture of committees constituted to serve the public's interests; such access allows the news media and the public to evaluate the credentials and affiliations of those making decisions about topics of public import and helps ensure that advisory committees are appropriately constituted.

SOURCE OF AUTHORITY TO FILE

Pursuant to Federal Rules of Appellate Procedure 27 and 29, amici have filed a motion for leave to file this amici curiae brief in support of Intervenor-Appellant.

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

A functioning system of self-governance depends on open debate among an informed public. Indeed, the Supreme Court has observed that a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open" is foundational to our democracy. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Undue limits on access to records related to the composition of committees with important roles in policymaking threaten the public's ability to engage in informed debate; yet, the court below imposed such limits—to the detriment of the news media's ability to help ensure that public bodies are transparent and accountable.

The Institutional Animal Care and Use Committee of the University of Washington ("IACUC" or the "Committee") is responsible for the oversight of animal use at the University of Washington (the "University"), notably, with respect to animal testing. Its responsibilities include: "ensur[ing] compliance with federal regulations, review[ing] and approv[ing] each proposed animal project before it can begin, inspect[ing] animal facilities, and perform[ing] a comprehensive review of the University's animal program twice a year." *IACUC*, Office of Animal Welfare at University of Washington, https://perma.cc/WU32-H7Y8 (last accessed May 19, 2022). The IACUC deliberates about animal care and conditions at the University on a monthly basis. *Id.* Under the regulations

implementing the Animal Welfare Act, 9 C.F.R. § 2.31, Office of Laboratory Animal Welfare ("OLAW") assured IACUCs must have five or more members, including at least one nonscientist and one person unaffiliated with the institution "to provide representation for general community interests in the proper care and treatment of animals." *Membership: Overview*, USDA National Agricultural Library, https://perma.cc/9K9D-SVW8 (last accessed May 19, 2022). The membership requirements are meant to ensure that any decisions made about animal use reflect balanced perspectives, such that "animals are properly cared for and only necessary experiments take place." David Grimm, *Animal care panel sues own university, fearing harassment from animal rights activists*, Science (Mar. 15, 2022), https://perma.cc/X476-UQYS. Members of the IACUC of the University are currently identified only by their initials. ER-3.

On or about June 24, 2021, the People for the Ethical Treatment of Animals ("PETA") filed a public records request with the University of Washington under Washington's Public Records Act. ER-343. The request asked for "copies of all of the Institutional Animal Care and Use Committee appointment letters that institutional officials have created or produced" from "the period from Jan[.] 1, 2014, to the present." *Id*. Through the appointment letters, PETA sought to learn the identities of the IACUC members to both confirm their credentials and determine whether the IACUC was legally constituted—an effort motivated by

PETA's concern that the IACUC is overwhelmingly aligned with research interests. *University of Washington's Lethal Animal Use Violates Federal Law*, Physicians Committee for Responsible Medicine (June 3, 2019), https://perma.cc/C2MD-S536.

On February 22, 2022, Plaintiffs-Appellees moved for a temporary restraining order ("TRO") and a preliminary injunction against Defendants-Appellees seeking to bar disclosure of the appointment letters. *See* ER-345–56. The district court granted the TRO on February 24, 2022 and entered the preliminary injunction two days later, on February 26, 2022. *See* Order Granting TRO; ER-2-10. PETA appealed. *See* ER-357–58.

The district court suggests that federal regulation of the IACUC is an appropriate substitute for the transparency sought by Intervenor-Appellant. *See* ER-8. But federal law—including statutory authorities like the Federal Advisory Committee Act ("FACA")—supports the opposite conclusion. In the analogous federal context, transparency—including about the makeup of policymaking and advisory committees—has long been recognized as serving not only as an important check on public institutions, but also as a necessary mechanism for ensuring that committees tasked with making policy decisions or providing policy advice, particularly about controversial topics of public concern, are viewed as legitimate by the public.

Amici write to highlight for the Court the steps Congress has taken to mandate transparency with respect to similarly situated committees at the federal level, and to urge the Court to reverse and vacate the district court's preliminary injunction barring the disclosure of IACUC members' appointment letters under Washington's Public Records Act.

ARGUMENT

I. Analogous federal law supports public access to the makeup of the IACUC under the Act.

A. FACA requires public disclosure of the identities of members of federal advisory committees.

The district court suggests that federal regulation obviates the need for public access to the IACUC members' appointment letters under the Washington Public Records Act. *See* ER-8 ("However, it appears that there is sufficient oversight to ensure the credentials and legal constitution of the committee."). The district court is mistaken. As a general matter, the Act requires disclosure of the requested records, Intervenor-Appellant's Br. at 49–50, regardless of the existence—or lack thereof—of a federal oversight scheme. But, in any event, federal regulation is no substitute for public transparency, as federal statutes like the Federal Advisory Committee Act, Pub. L. No. 92-463, 86 Stat. 770 (1972) ("FACA"), which require robust transparency for advisory committees at the federal level, make clear.

In enacting FACA to standardize regulations governing advisory committees at the federal level, Congress intentionally created a statutory scheme that mandates transparency about the government's relationship with outside advisors and consultants. Section 10(b) of FACA expressly requires that, subject to the parameters of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, 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.A. App. 2 § 10(b). 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*, U.S. General Services Administration (Mar. 14, 2000), https://perma.cc/HL3D-YJXF.

From this landscape of transparency emerged the FACA Database in 1988. *FACA Database*, U.S. General Services Administration, https://perma.cc/Q9GR-TPQX (last accessed May 19, 2022). Maintained by the General Services Administration ("GSA"), the FACA Database contains comprehensive information about federal advisory committees, including committee charters, budgets, meeting reports—and, notably, membership rosters. *See id.* Each of the 1,000 or so federal advisory committees is responsible for providing accurate and timely data about its

official conduct, *see id.*, which allows Congress, the public, and members of the news media to exercise valuable oversight of advisory committees. *See, e.g.*, Rachel Frazin, *International hunting council disbands amid litigation*, The Hill (Feb. 10, 2020), https://perma.cc/5FPF-Q7Q5 (discussing the International Wildlife Conservation Council disbanding after conservationists and animal rights activists filed a lawsuit arguing that the committee had a disproportionate number of pro-hunting advisors, contrary to federal law).

B. Public access to the composition of federal advisory committees helps limit private industry's ability to unduly influence public policymaking.

FACA was enacted in part to address concerns that special interests had captured advisory committees and were consequently exerting undue influence over public programs. Steven P. Croley & William F. Funk, *The Federal Advisory Committee Act and Good Government*, 14 Yale J. on Regul. 451, 453 (1997). Accordingly, beyond establishing regulations for advisory committees, Congress also deemed it vital to include provisions for public access within FACA to guard against unchecked private industry influence.

Senate testimony leading up to the passage of FACA noted "a tendency among advisory committees to operate in closed environments, permitting little opportunity for the public to be informed of their deliberations and recommendations, and of the materials and information on which they rely." S.

Rep. No. 92-1098, at 6 (1972). Senators cautioned against the "danger that subjective influences not in the public interest could be exerted on the Federal decision-makers" in such secrecy. *Id*.

This legislative history makes clear that Congress did not view regulation as a substitute for transparency. To the contrary, it recognized the importance of empowering the public with access to information that would enable effective scrutiny of advisory committees, including the involvement of private business interests, and ultimately improve the advisory committee process. *See Food Chem. News, Inc. v. Davis*, 378 F. Supp. 1048, 1051 (D.D.C. 1974) ("The purpose of the Federal Advisory Committee Act [is] to control the advisory committee process and to *open to public scrutiny* the manner in which government agencies obtain advice from private individuals . . . ." (emphasis added)).

That the identities of federal advisory committee members have been published in the FACA Database for more than thirty years is instructive. For example, any interested person can easily obtain a list of the current members of the Children's Health Protection Advisory Committee, along with their respective affiliations. *Children's Health Protection Advisory: Committee Members*, FACA Database, https://perma.cc/P9AT-DYS3 (last accessed May 19, 2022). The same degree of transparency applies to committees that deal with sensitive and divisive topics. For instance, one can obtain the identities of the members of the Advisory

Committee on Organ Transplantation, and each of their backgrounds, despite robust disagreement and debate over the topic of organ transplants. *Advisory Committee on Organ Transplantation: Committee Members*, FACA Database, https://perma.cc/XES4-WLQ6 (last accessed May 19, 2022). Indeed, the inclusion of names and affiliations in the FACA Database of committee members advising about not only the above-mentioned topics but also about issues concerning animals, climate, the justice system, and more, *see FACA Database*, *supra*, makes clear that, at the federal level, when individuals opt to serve in an advising capacity to a government entity, they should expect their identities to be public.

The same public policy considerations underlying the public access provisions in FACA apply to the IACUC. As a policymaking body established pursuant to federal law, and composed of private individuals serving in an advisory capacity, the IACUC deals with important issues around animal use. *See IACUC*, Office of Animal Welfare at University of Washington, *supra*. Indeed, given the IACUC's position as the primary oversight body on animal use at the University, it is vital that its membership roster be made available to the public, so that individuals can scrutinize members' qualifications and affiliations, and assure themselves that IACUC decisions are not being disproportionately influenced by private industry interests behind closed doors.

C. Transparency is more—not less—important for committees advising public institutions about controversial issues or subjects.

Plaintiffs-Appellees suggest that the controversial nature of IACUC's policymaking around animal testing precludes disclosure of its membership. ER-349. Again, this argument is undercut by the highly transparent, analogous federal framework outlined above: even those federal advisory committees focused on highly divisive, controversial issues are subject to the transparency requirements of FACA. Indeed, federal advisory committees are often specifically established to address controversial issues like stem cell research and artificial intelligence precisely because advisory committees are particularly beneficial when they tackle topics about which there is significant public disagreement. *Federal Advisory Committee Act (FACA): Committee Establishment and Termination*, Congressional Research Service (May 10, 2022), https://perma.cc/QP58-J6VB ("Establishing an advisory committee may also allow the federal government to provide a forum where potentially controversial topics may be discussed by experts outside the political arena . . . ."). And, as explained above, such federal advisory committees routinely publish their membership rosters online. *See, e.g.*, *National Security Commission on Artificial Intelligence*, FACA Database, https://perma.cc/F7XX-BD3N (last accessed May 19, 2022); *Advisory Council on Blood Stem Cell Transplantation*, FACA Database, https://perma.cc/S5U7-U9QP (last accessed May 19, 2022).

Promoting transparency and public access to information about the composition of these committees "c[an] reduce the likelihood that committees are, or are perceived as being, biased or imbalanced." U.S. Gen. Accounting Off., GAO-04-328, *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance* (2004). "[I]t is important that committees are perceived as balanced in order for their advice to be credible and effective," *especially* when they deal with controversial matters. *Id.* at 5. As such, "FACA's balance and openness provisions help to promote external trust by ensuring that interested parties are able to gain access to the discussions and/or material on which an advisory committees' policy recommendations are based." Rebecca J. Long & Thomas C. Beierle, *The Federal Advisory Committee Act and Public Participation in Environmental Policy* 35 (1999), https://perma.cc/59GK-CBYQ.

These same considerations are applicable here. That the IACUC works on controversial issues over which segments of the public may disagree, even vehemently, is not a reason to exempt it from the transparency mandates of the Washington Public Records Act. To the contrary, it is all the more reason to ensure robust public access to information about the IACUC, including its membership—the same kind of transparency that has existed at the federal level for decades.

CONCLUSION

As Justice Louis Brandeis famously noted, "[s]unlight is said to be the best of disinfectants," Louis D. Brandeis, Other People's Money 92 (1914). The best method for ensuring that the IACUC is balanced and properly constituted is to have robust, meaningful public access to information—not only about the IACUC's decisions but also of the identities of its members. When a committee advising a public institution deals with controversial, newsworthy issues of significant public concern, transparency is necessary for public trust, the perception of legitimacy, and to ensure meaningful accountability.

For the foregoing reasons, amici respectfully urge the Court to reverse and vacate the district court's preliminary injunction.

Dated: June 1, 2022

Respectfully submitted,

/s/ Katie Townsend

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APPENDIX A

SUPPLEMENTAL STATEMENTS OF IDENTITY OF AMICI CURIAE

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by journalists and media lawyers in 1970, when the nation's press 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.

Californians Aware is a nonpartisan nonprofit corporation organized under the laws of California and eligible for tax exempt contributions as a 501(c)(3) charity pursuant to the Internal Revenue Code. Its mission is to foster the improvement of, compliance with and public understanding and use of, the California Public Records Act and other guarantees of the public's rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss.

The Center for Investigative Reporting (d/b/a Reveal), 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 E.W. Scripps Company is the nation's fourth-largest local TV broadcaster, operating a portfolio of 61 stations in 41 markets. Scripps also owns Scripps Networks, which reaches nearly every American through the national news outlets Court TV and Newsy and popular entertainment brands ION, Bounce, Grit, Laff and Court TV Mystery. The company also runs an award-winning investigative reporting newsroom in Washington, D.C., and is the longtime steward of the Scripps National Spelling Bee.

First Amendment Coalition (FAC) 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. FAC advances this purpose by working to improve governmental compliance with state and federal open government laws. FAC's activities include free legal consultations on access to public records and First Amendment issues, educational programs, legislative oversight of California bills affecting access to government records and free speech, and public advocacy, including extensive litigation and appellate work. FAC's members are news organizations, law firms, libraries,

civic organizations, academics, freelance journalists, bloggers, activists, and ordinary citizens.

Fundamedios Inc. is a non-profit organization advocating for Spanish-speaking journalists in the United States and Latin America. The multidisciplinary organization monitors threats to Spanish-speaking journalists' safety, to their ability to gather and report the news, and to freedom of expression across the continent. Fundamedios Inc. was founded in 2007 by renown Ecuadorian journalist Cesar Ricaurte and has offices in Washington, D.C., and Quito, Ecuador.

The Investigative Reporting Workshop, based at 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 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 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.

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

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

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.

Student Press Law Center ("SPLC") is a nonprofit, nonpartisan organization which, since 1974, has been the nation's only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First Amendment to the Constitution of the United States. SPLC provides free legal assistance, information and educational materials for student journalists on a variety of legal topics.

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 Amici 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 June 1, 2022.

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
Counsel of Record for Amici Curiae
REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number(s): 22-35338

I am the attorney for amici curiae the Reporters Committee for Freedom of the Press and eight media organizations.

This brief contains 3,626 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[ ] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

[**X**] is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

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- [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature */s/ Katie Townsend* **Date** June 1, 2022