No. 11-2066

IN THE
United States Court of Appeals
FOR THE SEVENTH CIRCUIT

CHICAGO TRIBUNE COMPANY,

Plaintiff-Appellee,

v.

UNIVERSITY OF ILLINOIS BOARD OF TRUSTEES,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division, No.10 C 568, the Hon. Joan B. Gottschall

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BRIEF *AMICI CURIAE* OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, THE STUDENT PRESS LAW CENTER, ABC, INC., ADVANCE PUBLICATIONS, INC., AMERICAN SOCIETY OF NEWS EDITORS, THE ASSOCIATED PRESS, ASSOCIATION OF CAPITOL REPORTERS AND EDITORS, ATLANTIC MEDIA, INC., BLOOMBERG L.P., DOW JONES & COMPANY, INC., THE E.W. SCRIPPS COMPANY, FIRST AMENDMENT COALITION, GANNETT CO., INC., THE MCCLATCHY COMPANY, NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION, NBCUNIVERSAL MEDIA, LLC, THE NEW YORK TIMES COMPANY, NEWSPAPER ASSOCIATION OF AMERICA, NEWSPAPER GUILD – CWA, THE NEWSWEEK/DAILY BEAST COMPANY LLC, NORTH JERSEY MEDIA GROUP INC., THE SEATTLE TIMES CO., AND SOCIETY OF PROFESSIONAL JOURNALISTS IN SUPPORT OF PLAINTIFF-APPELLEE URGING AFFIRMANCE

Counsel for *amici curiae*:

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The Reporters Committee for Freedom of the Press
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Telephone: (703) 807-2100

Frank D. LoMonte
Student Press Law Center
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Arlington, VA 22209
Telephone: (703) 807-1904

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Counsel for Society of Professional Journalists

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Univ. of Illinois Bd. of Trustees

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

The Reporters Committee for Freedom of the Press

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

N/A

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: /s/ Lucy A. Dalglish Date: 8/16/2011

Attorney's Printed Name: Lucy A. Dalglish

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes X No

Address: 1101 Wilson Blvd., Suite 1100

Arlington, VA 22209

Phone Number: (703) 807-2100 Fax Number: (703) 807-2109

E-Mail Address: ldalglish@rcfp.org

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: /s/ Mark R. Caramanica Date: 8/16/2011

Attorney's Printed Name: Mark R. Caramanica

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 1101 Wilson Blvd., Suite 1100

Arlington, VA 22209

Phone Number: (703) 807-2100 Fax Number: (703) 807-2109

E-Mail Address: mcaramanica@rcfp.org

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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Student Press Law Center

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N/A

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i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: /s/ Frank D. LoMonte Date: August 16, 2011

Attorney's Printed Name: Frank D. LoMonte

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 1101 Wilson Blvd., Suite 1100

Arlington, VA 22209

Phone Number: 703-807-1904 Fax Number: 703-807-2109

E-Mail Address: flomonte@splc.org

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

ABC, Inc

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

N/A

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ABC, Inc. is a wholly owned indirect subsidiary of The Walt Disney Company

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

The Walt Disney Company

Attorney's Signature: /s/ John W. Zucker Date: August 16, 2011

Attorney's Printed Name: John W. Zucker

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 77 W. 66th Street, 16th Floor

New York, New York 10023

Phone Number: 212-456-7387 Fax Number: 212-456-2150

E-Mail Address: John.W.Zucker@abc.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. of Trustees of the Univ. of Illinois

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Advance Publications, Inc.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Sabin, Bermant & Gould LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

None.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None.

Attorney's Signature: /s/ Richard A. Bernstein Date: August 16, 2011

Attorney's Printed Name: Richard A. Bernstein

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: Sabin, Bermant & Gould, LLP, 4 Times Square, 23rd Floor, New York, New York 10036-6526

Phone Number: 212-381-7000 Fax Number: 212-381-7201

E-Mail Address: rbernstein@sabinfirm.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

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Sabin, Bermant & Gould LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

None.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None.

Attorney's Signature: /s/ Neil M. Rosenhouse Date: August 16, 2011

Attorney's Printed Name: Neil M. Rosenhouse

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: Sabin, Bermant & Gould, LLP, 4 Times Square, 23rd Floor, New York, New York 10036-6526

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E-Mail Address: nrosenhouse@sabinfirm.com

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

American Society of News Editors

Association of Capitol Reporters and Editors

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Kevin M. Goldberg, Fletcher, Heald & Hildreth, P.L.C.

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

Attorney's Signature: /s/ Kevin M. Goldberg /s/ Date: 8/15/2011

Attorney's Printed Name: Kevin M. Goldberg

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

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E-Mail Address: goldberg@fhhlaw.com

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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The Associated Press

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

N/A

(3) If the party or amicus is a corporation:

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N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: s/ Karen Kaiser Date: 8/17/11

Attorney's Printed Name: Karen Kaiser

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: The Associated Press

450 West 33rd Street, 16th Flr; New York, NY 10001

Phone Number: 212-621-7287 Fax Number: 212-621-5456

E-Mail Address: kkaiser@ap.org

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Univ. of Illinois Bd. of Trustees

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Atlantic Media, Inc.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

N/A

(3) If the party or amicus is a corporation:

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N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: /s/ Bruce L. Gottlieb Date: August 16, 2011

Attorney's Printed Name: Bruce L. Gottlieb

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

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Washington, DC 20037

Phone Number: 202-266-7374 Fax Number: 202-266-6001

E-Mail Address: bgottlieb@atlanticmediacompany.com

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Bloomberg News

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

N/A

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N/A

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N/A

Attorney's Signature: /s/ Charles J. Glasser, Jr Date: 08/16/11

Attorney's Printed Name: Charles J. Glasser, Jr

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 721 Lexington Avenue

New York, NY 10022

Phone Number: 212-617-4529 Fax Number: 917-369-5055

E-Mail Address: cglasser@bloomberg.net

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Dow Jones & Company, Inc.

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(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

News Corporation, Ruby Newco LLC

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: Jason Conti Date: 8-17-11

Attorney's Printed Name: Jason Conti

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 1211 Avenue of the Americas, 7th Floor Legal
New York, NY 10036

Phone Number: 212-416-2164 Fax Number: 212-416-2524

E-Mail Address: jason.conti@dowjones.com

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i) Identify all its parent corporations, if any; and

News Corporation, Ruby Newco LLC

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: Gail Gove Date: 8-17-11

Attorney's Printed Name: Gail Gove

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 1211 Avenue of the Americas, 7th Floor Legal
New York, NY 10036

Phone Number: 212-416-2162 Fax Number: 212-416-2524

E-Mail Address: gail.gove@dowjones.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. Of Trustees of Univ. of Illinois

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

[X] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

N/A

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

N/A

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

The E.W. Scripps Company

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

Attorney's Signature: /s/ David M. Giles Date: 8/17/11

Attorney's Printed Name: David M. Giles

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 312 Walnut Street, Suite 2800, Cincinnati, Ohio 45202

Phone Number: (513) 977-3891 Fax Number: (513) 977-3892

E-Mail Address: dave.giles@scripps.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Univ. of Illinois Bd. of Trustees

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

First Amendment Coalition

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

N/A

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: /s/ Peter Scheer Date: 8/16/2011

Attorney's Printed Name: Peter Scheer

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 534 4th Street, Suite B

San Rafael, CA 94901

Phone Number: 415-460-5060 Fax Number: 415-460-5155

E-Mail Address: pscheer@firstamendmentcoalition.org

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. Of Trustees of the Univ. of Illinois

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Gannett Co., Inc.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Gannett Co., Inc. corporate law department

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

Gannett Co., Inc. has no parent corporation.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

No publicly held company owns 10% or more of Gannett Co., Inc.'s stock.

Attorney's Signature: /s/ Barbara W. Wall Date: August 16, 2011

Attorney's Printed Name: Barbara W. Wall

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes ____ No X

Address: 7950 Jones Branch Drive, McLean, VA 22107

Phone Number: (703)854-6951 Fax Number: (703)854-2031

E-Mail Address: bwall@gannett.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Univ. of Illinois Bd. of Trustees

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

The McClatchy Company

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

N/A

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Contrarius Investment Management Limited

Attorney's Signature: /s/ Karole Morgan-Prager Date: 8/17/2011

Attorney's Printed Name: Karole Morgan-Prager

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 2100 Q Street, Sacramento, CA 95816

Phone Number: 916-321-1828 Fax Number: 916-326-5586

E-Mail Address: kmorgan-prager@mcclatchy.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. of Trustees of the Univ. of Illinois

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION (NPPA)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

N/A

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A - 501(c)(6) non-profit organization

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: s/ Mickey H. Osterreicher Date: 8/17/2011

Attorney's Printed Name: Mickey H. Osterreicher

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: 40 Wagon Wheel Drive
East Amherst, NY 14051

Phone Number: 716.688.7800 Fax Number: 716.608.1509

E-Mail Address: lawyer@nppa.org

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. Of Trustees of the Univ. of Illinois

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

NBCUniversal Media, LLC

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

Comcast

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

General Electric

Attorney's Signature: s/Steve Chung Date: 8/16/2011

Attorney's Printed Name: Steve Chung

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No x

Address: 30 Rockefeller Plaza, rm 1008E; New York, NY 10112

Phone Number: 212 664-4177 Fax Number:

E-Mail Address: steve.chung@nbcuni.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. Of Trustees of the Univ. of Illinois

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

The New York Times Company

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

New York Times Legal Department, 620 Eighth Ave., New York, NY 10018

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

Attorney's Signature: /s/David E. McCraw Date: August 15, 2011

Attorney's Printed Name: David E. McCraw

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No x

Address: The New York Times Company, Legal Department, 620 Eighth Avenue, New York, NY 10018

Phone Number: 212-556-4031 Fax Number: 212-556-1009

E-Mail Address: mccraw@nytimes.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Univ. of Illinois Bd. of Trustees

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Newspaper Association of America

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

René P. Milam, Vice President and General Counsel, Newspaper Association of America

4401 Wilson Boulevard, Suite 900, Arlington, VA 22203-4195

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

There are no parent corporations.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

The Newspaper Association of America is a nonstock corporation.

Attorney's Signature: /s/ René P. Milam Date: 08/16/11

Attorney's Printed Name: René P. Milam

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 4401 Wilson Boulevard, Suite 900

Arlington, VA 22203-4195

Phone Number: 571-366-1000 Fax Number: 571-366-1285

E-Mail Address: rene.milam@naa.org

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Univ. of Illinois Bd. of Trustees

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

The Newspaper Guild-Communications Worker of America

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Barr & Camens

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: /s/ Barbara Camens Date: August 18, 2011

Attorney's Printed Name: Barbara Camens

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: Barr & Camens, 1025 Connecticut Avenue, NW, Suite 712
Washington, DC 20036

Phone Number: 202 293 9222 Fax Number: 202 293 6893

E-Mail Address: bcamens@barrcamens.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. of Trustees of the Univ. of Illinois

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

The Newsweek/Daily Beast Company LLC

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Randy L. Shapiro, Esq., Vice President & General Counsel, The Newsweek/Daily Beast Company LLC

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

The Newsweek/Daily Beast Company LLC is a limited liability company that is jointly owned by IAC, a publicly traded company, and The Harman Family Trust.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

IAC

Attorney's Signature: /s/ Randy L. Shapiro Date: August 18, 2011

Attorney's Printed Name: Randy L. Shapiro

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: The Newsweek/Daily Beast Company LLC
555 West 18th Street, New York, NY 10011

Phone Number: 212-445-4713 Fax Number: 917-591-2321

E-Mail Address: randy.shapiro@newsweekdailybeast.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. Of Trustees of the Univ. of Illinois

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

North Jersey Media Group Inc.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

Macromedia Incorporated

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: s/Jennifer A. Borg Date: August 16, 2011

Attorney's Printed Name: Jennifer A. Borg

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: 1 Garret Mountain Plaza, P.O Box 471
Woodland Park, NJ 07424

Phone Number: 973-569-7680 Fax Number: 973-569-7286

E-Mail Address: borgj@northjersey.com

rev. 01/08 AK

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Co. v. University of Illinois Board of Trustees

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

The SeattleTimes Co.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Davis Wright Tremaine LLP (Bruce E. H. Johnson)

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

There is no parent corporation.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

The McClatchy Company owns 49.5% of the voting common stock, 70.6% of nonvoting common stock of ST

Attorney's Signature: s/Bruce E. H. Johnson Date: August 17, 2011

Attorney's Printed Name: Bruce E. H. Johnson

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: 1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045

Phone Number: (206) 757-8069 Fax Number: (206) 757-7069

E-Mail Address: brucejohnson@dwt.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. of Trustees of the Univ. of Illinois

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Society of Professional Journalists

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Baker & Hostetler LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: s/ Bruce W. Sanford Date: 08/18/2011

Attorney's Printed Name: Bruce W. Sanford

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Baker & Hostetler LLP, 1050 Connecticuit Ave. NW, Suite 1100, Washington, D.C. 20036

Phone Number: 202-861-1500 Fax Number: 202-861-1783

E-Mail Address: bsanford@bakerlaw.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. of Trustees of the Univ. of Illinois

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Society of Professional Journalists

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Baker & Hostetler LLP

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i) Identify all its parent corporations, if any; and

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ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

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Appellate Court No: 11-2066

Short Caption: Chicago Tribune Company v. Bd. of Trustees of the Univ. of Illinois

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

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ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici comprise national and regional news organizations, nonprofit open government, freedom of information ("FOI") and First Amendment advocacy groups, news professionals and trade associations that regularly gather and disseminate valuable news and information to the public in a variety of media or otherwise support and defend such efforts to do so.[1]

Amici regularly investigate and report to the public on government activity. To fully realize their constitutionally protected watchdog role, *amici* frequently rely on open records laws across the country to observe and scrutinize the conduct of public officials and other newsworthy figures. To that end, they have an ongoing stake in ensuring such laws remain robust and are not abused by government entities seeking to hide their actions from public review and scrutiny. This case presents such an attempt.

SOURCE OF AUTHORITY TO FILE

In accordance with Fed. R. App. P. 29(a), the parties have consented to this filing.

FED. R. APP. P. 29(c)(5) STATEMENT

Pursuant to Fed. R. App. P. 29(c)(5), *amici* state:

(A) no party's counsel authored this brief in whole or in part;

(B) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(C) no person — other than the *amici curiae*, their members or their counsel — contributed money that was intended to fund preparing or submitting the brief.

[1] A complete description of each *amici* is set forth in the addendum to this brief.

INTRODUCTION

Like the fabled boy who cried "wolf," this case presents the increasingly familiar tale of a public university that, embarrassed by its own wrongdoing, cries "student privacy" in an attempt to frustrate public disclosure of information reflecting unflatteringly on the conduct of the university's administrators. The University of Illinois Board of Trustees (the "University") is asking the Court to turn on its head a federal statute that was intended to promote school reform and to protect the interests of students, including prospective students, against abuse. It would be a bitter irony for this Court to interpret this reform statute, the Family Educational Rights and Privacy Act ("FERPA"), so as to enable the University to continue concealing the full breadth of a scheme injurious to innocent college applicants whose only shortcoming was failing to be born into a family of influence and privilege. This Court should reject the University's invitation.

Every state and the District of Columbia have enacted wide-ranging records disclosure statutes entitling the public to obtain, subject to limited statutory exemptions, information about the operations of government agencies, including public schools and colleges. The type of information sought by the *Chicago Tribune* in this case exemplifies exactly why public records laws exist and why exemptions are to be narrowly construed so as to err on the side of transparency. In the absence of transparency, schemes such as the VIP "clout admissions list" system maintained by the University invariably will proliferate.

The "student privacy" song that the University and its *amici* supporters are singing should sound familiar. It is the same refrain sung by administrators at Florida State University, who sought to conceal their correspondence with the NCAA regarding allegations of misconduct by employees who gave athletes preferential academic assistance. *See Nat'l Collegiate Athletic Ass'n v. Associated Press*, 18 So.3d 1201 (Fla. Dist. Ct. App. 2009) (rejecting characterization of

NCAA's correspondence with public university over possible rule violations as a FERPA education record). This is the same refrain sung by administrators at Wyoming's Laramie County Community College, who sought to conceal a report admonishing the college president for his behavior on an overseas trip. *See Laramie County Cmty. Coll. v. Cheyenne Newspapers, Inc.*, No. 176-092 (Wyo. Dist. Ct. May 25, 2010) (order dissolving temporary restraining order enjoining newspaper from publishing leaked report questioning president's handling of student suicide threat).[2] It is the same refrain sung by administrators at the University of North Carolina, who sought to conceal records shedding light on an athletic department scandal that included an athlete parking ticket scandal. *News & Observer Publ'g Co. v. Baddour*, No. 10 CVS 1941 (N.C. Super. Ct. May 12, 2011) (order granting in part news organizations' motion for judgment on the pleadings entitling them to disclosure of athletic department records).[3] As did the court in each of the aforementioned cases and many more like them, this Court should apply FERPA in a common-sense manner consistent with its history and purpose, not in the absurdly literalist manner that the University urges.

Even though court after court has rebuked institutions for misapplying FERPA to frustrate public oversight, the abuse of FERPA remains rampant. The losers are the taxpayers and parents, who need timely, complete information to effectively oversee the way government agencies are operating. This Court should join the growing consensus behind the unremarkable proposition that a statute protecting the confidentiality of education records applies only to legitimately confidential records that are about education.

[2] *Available at* http://www.splc.org/pdf/WyomingTRODissolved.pdf (last visited Aug. 17, 2011).

[3] *Available at* http://www.splc.org/pdf/BaddororderMay2011.pdf (last visited Aug. 17, 2011).

ARGUMENT

I. FERPA is Widely Misused to Obstruct School Accountability.

Congress enacted FERPA in 1974 amid a climate of Nixon-era scandals that bred suspicion and distrust of government. Sen. James Buckley of New York—who went on to serve as a judge on the U.S. Court of Appeals for the District of Columbia—presented the provision as a floor amendment in response to "growing evidence of the abuse of student records across the nation." 121 Cong. Rec. S13990 (May 13, 1975). The animating principle behind FERPA was to enable students and parents to check government abuses by keeping closer watch on the way government agencies used the students' confidential information. *See* Mary Margaret Penrose, *In the Name of Watergate: Returning FERPA to its Original Design*, 14 N.Y.U. J. LEGIS. & PUB. POL'Y 75, 80-81 (2011) (describing sponsors' intent behind FERPA as "to prevent educators from using … secretly maintained 'private scribblings' in handling a child's future and educational opportunities").

Buckley set forth two concerns that FERPA was intended to address. First, schools traditionally had provided parents with very limited access to student files. This left parents with little opportunity to correct inaccurate and stigmatizing information in their child's records, even when schools relied on those records to classify or punish students. *See* 121 Cong. Rec. S13990 Second, many schools lacked consistent policies governing access to student records and granted other government actors—such as police and health departments—access to sensitive student records, while denying parents the same access. *See id.* at S13990-91. Notably, none of these concerns had anything to do with government agencies honoring requests for newsworthy public records about matters of public importance.

The act requires federally funded schools and colleges to maintain policies against

disclosure of confidential "education records," which are defined as "those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). In other words, there are two explicit statutory criteria for a document to be confidential under FERPA: it must "directly relate" to a student, and it must be "maintained" by the institution.

Congressional discussion in the course of amending the law in December 1974 sheds some light on the intentions of FERPA's main sponsors, Buckley and Rhode Island Sen. Claiborne Pell. In addition to Buckley and Pell's formal joint statement explaining the amendments, there was an enlightening exchange between Pell and New Hampshire Sen. Thomas McIntyre. McIntyre asked Pell to confirm McIntyre's understanding that "education record" was intended to encompass "everything in institutional records *maintained for each student in the normal course of business and used by the institution in making decisions that affect the life of the student*." Pell agreed with McIntyre's understanding of the law's intent. 120 Cong. Rec. S39858-59 (Dec. 13, 1974) (emphasis added).

This understanding comports with Buckley's original concern that parents needed more access to the records schools used to make academic and disciplinary decisions about their children. It also suggests the law was not intended to apply to documents that only tangentially or incidentally refer to students.

Nevertheless, just as the University is attempting here, college after college has invoked FERPA in an attempt to protect not the well-being of its students but its own public relations image. In so doing, these institutions have read completely out of the statute the prerequisites that the record actually contain confidential information in the first place, that the record be

"educational" in nature, that the record be "maintained" by the institution, and that its contents be "directly related" to a student.

To give just one example, the University of the Pacific, relying on FERPA, convinced a federal district judge to seal every substantive document in a former student-athlete's civil rights suit alleging that the university responded inadequately to her report that three male athletes sexually assaulted her. The University claimed to be motivated by protecting the student's best interests—even though the student was proceeding under a pseudonym and could not be identified, and even though the university was simultaneously seeking to make her pay its six-figure attorney fee bill on the grounds that it regarded her lawsuit as frivolous. *See* Marjie Lundstrom and Denny Walsh, *Judge to Reconsider Unsealing Records in Suit Alleging Rape at UOP*, SACRAMENTO BEE, Nov. 17, 2010, 2010 WLNR 22880368.[4]

The pervasive misuse of FERPA to withhold information reflecting negatively on the image of schools and colleges has real public safety costs. In 2010, a Maine newspaper, *The Sun Journal* of Lewiston, received parent complaints that inadequately trained school employees were excessively using physical restraints to immobilize unruly children. The school district refused to honor a public records request even for the names of the teachers who used physical restraints, claiming the information was protected by FERPA, so that the newspaper was unable to verify whether those involved in physically restraining children were properly trained to do so. *See* Editorial, *Are Student Restraints a State Secret?*, THE SUN JOURNAL, July 18, 2010;[5] Emily Parkhurst, *Children Held Down: Families Question Therapeutic Restraints in Schools*, THE SUN

[4] "WLNR" refers to Westlaw NewsRoom citations.

[5] *Available at* http://www.sunjournal.com/our-view/story/879218 (last viewed Aug. 17, 2011).

JOURNAL, July 14, 2010, at A1.[6] Similarly, parents routinely are told that they may not have information about the bullying of their own children, purportedly to protect the privacy interests of the bullies.[7] *See, e.g.*, Michael Brindley, *No Right to Know for Bullying? Nashua Superintendent Says Privacy Laws Stand in Way*, NASHUA TELEGRAPH, Oct. 12, 2010.[8]

At the college level, an investigation by the journalism nonprofit Center for Public Integrity found that it was difficult for the public to get reliable information about how effectively campus disciplinary bodies were (or were not) disciplining students who commit sexual assault because colleges regularly cite FERPA to withhold even anonymous statistical data about how many disciplinary cases they handle and the penalties they impose. *See* Kristen Lombardi, *Sexual Assault on Campus Shrouded in Secrecy*, CENTER FOR PUBLIC INTEGRITY, Dec. 1, 2009.[9]

Indeed, until the practice was publicly exposed, it was standard FERPA procedure at the University of Virginia to require a student complaining of sexual assault to sign a confidentiality agreement promising—under threat of disciplinary action—never to discuss her case with anyone if she wanted the school to investigate it. *See id*.

Buckley, the primary author of FERPA, has publicly decried the widespread

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[6] *Available at* http://www.sunjournal.com/city/story/877742 (last viewed Aug. 17, 2011).

[7] *See also In re: WLKY-TV/Jefferson County Public Schools*, 11-ORD-106 (Op. Ky. Atty Gen'l July 11, 2011 (television station forced to appeal to attorney general to obtain surveillance video of fight between parent of bullying victim and school bus driver, because school district claimed videotape was a FERPA education record).

[8] *Available at* http://www.nashuatelegraph.com/news/878498-196/no-right-to-know-for-bullying.html (last viewed Aug. 17, 2011).

[9] *Available at* http://www.publicintegrity.org/investigations/campus_assault/articles/entry/1838/ (last viewed Aug. 15, 2011).

misapplication of the statute to conceal information beyond what Congress intended. When reporters from *The Columbus Dispatch* told Buckley how major colleges were using FERPA to withhold or redact potentially incriminating information about their athletic programs—such as a list of summer jobs held by student-athletes, the names of those receiving complimentary football tickets, and the manifests of football team flights—Buckley readily identified those records as beyond the proper scope of confidential education records: "That's not what we intended. The law needs to be revamped. Institutions are putting their own meaning into the law. … Things have gone wild. These are ridiculous extensions. One likes to think common sense would come into play. Clearly, these days, it isn't true." Jill Riepenhoff & Todd Jones, *Secrecy 101: College Athletic Departments Use Vague Law to Keep Public Records from Being Seen*, THE COLUMBUS DISPATCH, May 31, 2009, at A1, 2009 WLNR 10328545.

In an interview with the *Register-Guard* newspaper of Eugene, Oregon, regarding the University of Oregon's FERPA-based refusal to release any records—even redacted ones—concerning the status of an NCAA investigation into the basketball team's possible use of an ineligible player, Buckley said:

> One thing I have noticed is a pattern where the universities and colleges have used it as an excuse for not giving out any information they didn't want to give. ... Based on what I believe to be extreme misinterpretations of (the law) by colleges and universities, if I was still in the Senate, I would long ago have introduced amendments to the bill to get rid of the kind of (issue). George Schroeder, *It's Clear the 'O' stands for Opaque*, THE REGISTER-GUARD, Feb. 18, 2011, at C1.[10]

Far from protecting the interests of students against abuse by their schools, FERPA instead has become the default response to any citizen's request for information, interposed to

[10] *Available at* http://special.registerguard.com/csp/cms/sites/web/sports/25904339-41/records-public-ncaa-oregon-ferpa.csp (last viewed Aug. 17, 2011).

delay and frustrate journalists and parents alike as they attempt to discharge their legitimate oversight role over institutions of government.

The vast majority of courts that have been asked to define "education records" have applied a limited and common-sense understanding of the term that rejects the expansive application urged by the University. For example, in a case involving allegations that University of Maryland employees "fixed" parking tickets for student-athletes and coaches, a Maryland appellate court defined FERPA so as to permit disclosure of individual athletes' tickets, even though the tickets contained student names: "[FERPA] was not intended to preclude the release of any record simply because the record contained the name of a student. The federal statute was obviously intended to keep private those aspects of a student's educational life that relate to academic matters or status as a student." *Kirwan v. The Diamondback*, 721 A.2d 196, 204 (Md. Ct. App. 1998).

Nevertheless, schools and colleges persistently cite FERPA to deny journalists' requests for public records, even when the records have little relation to a student's "educational life." For instance, the University of Wisconsin-Milwaukee forced journalists to file suit in 2009 to obtain access to audio recordings and minutes of the meetings of a state government committee whose members included students. University officials took the position that—even though the meeting took place in front of a roomful of attendees from the public, any of whom was entitled to record or transcribe the meeting—the voices of students magically became confidential under FERPA when reduced to recorded form. *The UWM Post v. Union Policy Bd.*, No. 09CV017771 (Wisc. Cir. Ct.) (Complaint filed Nov. 11, 2009);[11] Bruce Wielmetti, *UWM Student Paper Wins*

[11] *Available at* http://www.splc.org/pdf/uwmpost_complaint_1109.pdf (last visited Aug. 17, 2011).

Public Records, Legal Fees, MILWAUKEE JOURNAL SENTINEL, Feb. 16, 2010, 2010 WLNR 3250060.

Yet, even after UWM gave the newspaper the requested records and incurred no sanction from the Department of Education, the University of Florida insisted on the same discredited view of "education records" and forced a requester to sue—successfully—to obtain recordings of Student Senate meetings that had been held in public view. *See Bracco v. Machen*, No. 01-2009-CA-4444 (Fla. Cir. Ct., 8th Cir. Jan. 10, 2011) (ruling that tapes and transcripts of University of Florida Student Senate meetings were not confidential FERPA records and were subject to disclosure under Florida law).[12] Indeed, it is difficult to think of a document, no matter how tangential to a student's educational life, that has *not* been classified as a confidential education record under the "privacy run amok" view of FERPA that the University would have this Circuit legitimize.[13]

While journalists have, in most cases, ultimately been able to gain access to essential information, the delay imposed by ill-founded FERPA objections imposes significant costs. In addition to the obvious financial cost of being forced to litigate over records in which no legitimate privacy interest exists, the cost of lost time can be decisive in the newsgathering context (as government agencies know well). The *Sun Journal* in Maine was investigating whether students were endangered by the excessive use of restraints by untrained school

[12] *Available at* http://www.splc.org/pdf/bracco_order.pdf (last visited Aug. 17, 2011).

[13] *See, e.g.*, Elise Jenswold, *Denied: OSU Officials Refused to Release Public Records*, THE DAILY O'COLLEGIAN, May 4, 2010, *available at* http://www.ocolly.com/denied-1.1472546 (last visited Aug. 15, 2011) (athlete parking tickets); Michael Malik, *University Won't Disclose Names of Parking Violators*, THE HERALD-TIMES, May 23, 2010, 2010 WLNR 10660036 (same); Vimal Patel, *Unrelated Reports of a Dead Goat, Hazing Put Greek Life on Pause*, THE EAGLE, Jan. 24, 2011, 2011 WLNR 1439645 (reports identifying fraternities found guilty of hazing).

employees. This is information the public needs to know now, not two years from now when an appellate court agrees with the requester (assuming that the requester has the wherewithal to wage a prolonged battle against a taxpayer-funded adversary; most do not).

It is always possible to interpret a statute in an absurdly literal way that is consistent with its wording on the page but inconsistent with its intent, inconsistent with the legal framework within which that statute exists, and inconsistent with common sense. For example, there is nothing in the literal text of the FERPA statute stating that an "education record" is severable, so that identifying information may be redacted and the balance of the document produced in response to a public-records request. The statute simply speaks in terms of "education records," which is capable of being read as an all-or-nothing proposition. An all-or-nothing reading would, of course, lead to irrational results. A single mention of a named student's grade-point average in a 2,000-page transcript of a meeting could—in an ultra-literal application of the statute—transform the entire document into a confidential "education record." Consequently, court after court has applied common sense to give FERPA a narrow construction that minimizes the violence done to records-disclosure statutes. *See, e.g., Bd. of Trustees, Cut Bank Pub. Sch. v. Cut Bank Pioneer Press*, 160 P.3d 482 (Mont. 2007) (ruling that newspaper was entitled to documents, with names removed, disclosing punishment imposed on two students for shooting people with pellet guns); *Unincorporated Operating Div. of Ind. Newspapers, Inc. v. Trustees of Ind. Univ.*, 787 N.E.2d 893 (Ind. Ct. App. 2003) (ordering release of records of investigation into student complaints against college basketball coach, with only student names redacted: "Although FERPA contains no redaction provision, neither does it prohibit such."); *Poway Unified Sch. Dist. v. Superior Court of San Diego County (Copley Press)*, 62 Cal.App.4th 1496 (Cal. App. 1998) (ordering disclosure, with only names redacted, of a "notice of claim" under

California's Claims Act filed against a school district by a student seeking damages for allegedly unfounded disciplinary action).

It is settled practice for courts to harmonize FERPA with the state public-records laws with which they interact, so as to give effect to both bodies of law as best as possible. The University's assertion that only FERPA matters and that its effect on state law need not even be considered is inconsistent with precedent, and with the well-established rule that open-records laws are to be interpreted with a presumption of openness, to guard against exactly the kind of abuses that flourished at the University of Illinois in the absence of transparency.

II. FERPA Does Not Operate as a Privilege to Automatically Shield From Disclosure All Records Related in Any Manner to a Student.

FERPA was never intended to create a school-student privilege and "is not a law which absolutely prohibits the disclosure of education records…." *Ellis v. Cleveland Mun. Sch. Dist.*, 309 F.Supp.2d 1019, 1023 (N.D. Ohio 2004). Given the foregoing catalogue of FERPA abuses, it is clear that the public would benefit from a comprehensive and definitive, common-sense definition of what constitutes a protected record under FERPA. Should this Court take this occasion to fashion the parameters of such a definition, *amici* respectfully request that it account for the following as necessary baseline considerations.

A. Only records systematically and regularly maintained in a central repository potentially lie within FERPA's limited scope.

FERPA records management practices are premised upon a desire to maintain some level of institutional control over records directly related to a student's core academic activities. Not surprisingly, the substance of such academic records is generally uniform across students: course grades, transcripts, standardized test scores, and financial aid information that a university routinely uses to make decisions affecting the academic life of a student. Such records are, as a

matter of course, compiled and required to be maintained in a particular file so that whenever a student (or parent) seeks access to their education records under FERPA, a records custodian can easily provide them a complete file containing all pertinent academic information used by the institution. As mentioned above, FERPA does not contemplate imposing a burden on school officials to searching high and low across an entire campus for all possible records that may in some manner implicate a particular student.

As the U.S. Supreme Court held in *Owasso Indep. Sch. Dist. v. Falvo*, to give FERPA practical effect and avoid a ridiculous situation where any record containing a student's name is subject to the law, it must be given a common-sense interpretation that effects its purpose of allowing students ready access to the ultimate records that formally memorialize their academic standing.

To this end, the Court found that the "word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled." 534 U.S. 426, 433 (2002). The Court further noted that FERPA requires institutions to "maintain a record, kept with the education records of each student" that documents who has ever requested access to the particular student's records and why they sought access. *See id*. at 434 (*quoting* 20 U.S.C. 20 U.S.C. § 1232g(b)(4)(A) (2011)). Coupled with the administrative hearing rights FERPA imparts to students to challenge the accuracy of education records, the Court found that the only logical conclusion as to what is meant by education records are those that are centrally maintained and stored in the normal course of academic life. *See id*. at 435.

To hold otherwise would impose institutional recordkeeping burdens requiring every individual who ever had custody of a record linked to an identifiable student to preserve the

record and maintain a register for it. So too would the law impose widespread hearing rights at all levels if disparate records were subject to its provisions. As the Court noted, "[i]t is doubtful Congress would have provided parents with this elaborate procedural machinery to challenge the accuracy of the grade on every spelling test and art project the child completes." *Id.*

In interpreting similar access provisions under state law, courts have adopted *Falvo's* rationale. In 2008, the California Court of Appeals for the Second District held that the California Information Practices Act of 1977 ("IPA") did not confer the right to inspect and challenge the accuracy of individual student exams. *See Moghadam v. Regents of the Univ. of California*, 169 Cal.App.4th 466, 479-80 (Cal. Ct. App. 2008). As in FERPA, the IPA defined a "record" as one that is "maintained" by an agency. *See id*. at 480. The *Moghadam* court noted that it agreed "that the ordinary meaning of 'maintain' is to 'keep in existence or continuance; preserve." *Id*. The court further found that this meant that such records are therefore "preserved in the ordinary course of business by a single, central custodian" and that in the case of a university records such as "registration forms and transcripts would be typical…" *Id*.

The following year, a U.S. District Court in California held that a school was not required to provide first-party access under FERPA and similar implementing regulations under the Individuals with Disabilities Education Act ("IDEA") to all emails that referenced the student. *See S.A. v. Tulare County Office of Educ.*, No. CV F 08-1215 LJO GSA, 2009 WL 3126322 (E.D. Cal. Sept. 24, 2009). The court found that in accordance with *Falvo*, only emails that were maintained in the student's permanent record were subject to rights of access, rejecting the argument that computer systems automatically "maintain" all emails. *See id*. at *4-*5. Obviously, an ultra-literal reading of FERPA would have, of course, imposed crushing administrative search and archival burdens well beyond what FERPA's sponsors envisioned.

The U.S. District Court for the Northern District of Ohio reached the same conclusion the following year when individuals sought access to teachers' personal notes on student achievements referred to as "tally sheets." *See Bd. of Educ. of the Toledo City Sch. Dist. v. Horen*, No. 3:07CV3631, 2010 WL 3522373 (N.D. Ohio Sept. 8, 2010). Citing *Falvo*, the court found that the tally sheets were "temporary vehicles assisting school staff in memorializing notes in students' permanent records…." *Id*. at * 25. Hence they were not "maintained" as required under FERPA or IDEA. *See id*. at *26.

Finally, courts have also noted that even when records may be formally maintained, FERPA was intended to apply only to *academic* records. *See Red & Black Publ'g Co., Inc. v. Bd. of Regents*, 427 S.E.2d 257 (Ga. 1993). In holding that records regarding hazing charges were not education records, the court made clear that "Organization Court records are maintained at the Office of Judicial Programs while 'education records' are maintained at the Registrar's office." *Id*. at 261.

As courts have made clear, FERPA was intended to apply only to academic records routinely compiled and maintained in a single, permanent repository. Not only does this make sense in light of the administrative nightmare that would befall schools if FERPA recordkeeping requirements applied to all records that relate in some way to a student, but it also serves FERPA's goal of holding schools accountable for their actions and not allowing them to shield institutionalized misconduct from public review. "Prohibiting disclosure of any document containing a student's name would allow universities to operate in secret, which would be contrary to one of the policies behind" FERPA. *Kirwan*, 721 A.2d at 204.

This is exactly what the University attempts here. Documents reflecting the shadow admissions process are kept separate from and unknown to the legitimate application process.

They purposely exist outside of the system, and with good reason for the University. Clearly FERPA was not intended as a means to perpetuate a fraud on the taxpayers of Illinois and those students who sought admission to the University of Illinois based on personal merit. Any definition of what constitutes an "education record" under FERPA must necessarily limit it to those academic records traditionally stored in one repository at the Registrar's Office.

B. Only education records with a direct, purposeful relation to core academic activities potentially lie within FERPA's limited scope.

If FERPA can be used as a shield to limit the public's access to newsworthy records, it ceases to be a law intended to bring greater oversight to institutional activity. *Amici* do not take the position that no legitimate privacy interests inure in certain student records. *Amici* do, however, dispute the far-reaching efforts of institutions to cast any and all records reflecting a student's presence on campus as protected under FERPA. Hence, a second minimum consideration in determining whether a particular record is subject to FERPA is that it be directly, not tangentially, related to a student's core academic activities. It is clear what the majority of courts consider to fall within this parameter: final grades, transcripts, test scores, personal financial aid information, and like records traditionally thought of as comprising one's academic record that an institution maintains and uses to make academic-related decisions.

This view actually comports with U.S. Department of Education representations to the U.S. Supreme Court in the *Falvo* case. Despite the August 6, 2009 DOE opinion letter relied upon by the University in this case, the government has previously taken contrary positions. In its *amicus curiae* brief in the *Falvo* case, the government states:

> The designation of a document as an education record under FERPA means not only that it is subject to restrictions against release without parental consent, but also that parents have a right to inspect and review the record, a right to a hearing to challenge the content of the record to ensure that it is not

> inaccurate, misleading, or otherwise in violation of the privacy rights of the student, and a right to insert into such records a written explanation by the parents regarding the content of the records. Brief for the United States as *Amicus Curiae* on Petition at 15-16, *Owasso Indep. Sch. Dist. v. Falvo*, 534 U.S. 426 (2001) (No. 00-1073).

This understanding of FERPA, as advanced by the Department, would necessarily limit the kinds of records covered by FERPA to those that a school would use in making an adverse decision against a student. One cannot challenge the "accuracy" of a record documenting a political figure's undue influence, nor can one assert a right to insert additional information in such a document.

Yet these issues continue to be litigated, as recalcitrant school officials routinely flout FERPA's intent and broadly apply its protections, often in self-serving ways that frustrate the public's legitimate right to know about health and safety hazards. Fortunately, most courts have continually rejected the strained reading of FERPA given by school officials. This court should do the same.

For example, FERPA has been cited by school officials seeking to withhold disclosure of records documenting allegations of teacher abuse. In *Ellis*, incident reports regarding alleged altercations between substitute teachers and students were misidentified as FERPA records. *See Ellis*, 309 F. Supp.2d at 1021-22. Once again, a court rejected the notion that FERPA applies simply because a record may refer to a student. The court found that "[w]hile these records clearly involve students as alleged victims and witnesses, the records themselves are directly related to the activities of the teachers themselves and are therefore not governed by FERPA." *Id*. at 1023.[14]

[14] *See also Hampton Bays Union Free Sch. Dist. v. Pub. Employment Relations Bd.*, 878 N.Y.S.2d 485, 488 (N.Y. App. Div. 2009) ("In our view, *teacher* disciplinary records and/or

FERPA has also been rejected in instances where a principal disclosed to parents the results of a disciplinary investigation into a student accused of being verbally and physically aggressive toward other students. *See Jensen v. Reeves*, 3 Fed. Appx. 905 (10th Cir. 2001) ("Reading such [disciplinary records] disclosures to fall within the ambit of [FERPA] would place educators in an untenable position: they could not adequately convey to the parents of affected students that adequate steps were being undertaken to assure the safety of the student.") *Id*. at 910.

Universities have equally tried—unsuccessfully—to shield legal documents from public view under the guise of FERPA. In *Poway*, the California Court of Appeals stated that "it defies logic and common sense to suggest that a Claims Act claim [related to well-publicized instances of high school hazing where a student was allegedly sodomized with a broomstick], even if presented on behalf of a student, is an 'educational record' or 'pupil record' within the purview" of FERPA. 62 Cal.App.4th at 1507. Likewise, the U.S. District Court for the Middle District of North Carolina rejected the argument that FERPA required a court to seal the depositions of a former university student athlete and her parents filed in a sexual harassment case against the university because they referred to other students. *See Jennings v. Univ. of North Carolina at Chapel Hill*, 340 F.Supp.2d 679 (M.D.N.C. 2004). "The existence of FERPA does not heighten the students' privacy interest in these depositions. The information at issue in the depositions is

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records pertaining to allegations of teacher misconduct cannot be equated with *student* disciplinary records."); *Briggs v. Bd. of Trustees Columbus State Cmty. Coll.*, No. 2:08-CV-644, 2009 WL 2047899 (S.D. Ohio July 8, 2009)(finding student complaints against professors relate to professor, not students); *Wallace v. Cranbrook Educ. Cmty.*, No. 05-73446, 2006 WL 2796135 (E.D. Mich. Sept. 27, 2006) (finding student statements made in connection with teacher investigation were not FERPA records); *Baker v. Mitchell-Waters*, 826 N.E.2d 894 (Ohio Ct. App. 2005) (finding records regarding teacher neglect and abuse of students were not FERPA records).

not an 'educational record' as defined by FERPA, nor is it the type of information that would be on a FERPA-protected educational record." *Id*. at 684.

Further, in 2010 a trial court in Ottawa County, Michigan held that FERPA does not protect a "confidential" settlement agreement between a student and a local school district stemming from various hazing incidents. *The Herald Publ'g Co. v. Coopersville Area Public Schs.*, No. 09-01400-PZ (Mich. Cir. Ct. Mar. 30, 2010).[15] Journalists had requested access to the amount of money paid out under the settlement by the school district, a fact the court noted was "an expenditure of public funds" subject to disclosure.

Finally, courts also continually reject the notion that FERPA applies to records that do not specifically relate to any particular student. *See, e.g.*, *Hardin County Schs. v. Foster*, 40 S.W.3d 865 (Ky. 2001) (holding that disciplinary statistical data are not FERPA records); *Bd. of Trustees of Cut Bank Pub. Schs.*, 160 P.3d 482 (holding that redacted disciplinary records cannot be withheld under FERPA); *Nat'l Collegiate Athletic Ass'n*, 18 So.3d 1201.

Despite schools' efforts to the contrary, courts well understand the limits of what constitutes an "education record" under FERPA. For any privacy protections to attach, the records must be those core academic records that common sense dictates were intended to be covered. As in the instant case, courts do not tolerate efforts to shield records from third parties when the real actions documented by the records are of government officials or parties other than the student. It is of no legal significance that shadow admissions records may tangentially relate to a former or enrolled student's non-academic activities. They continue to be primarily reflective of others' actions and should receive no protection under FERPA.

[15] *Available at* http://www.splc.org/pdf/coopersville.pdf (last visited Aug. 18, 2011).

C. FERPA permits warranted records disclosures in certain targeted instances.

Contrary to the University's belief that FERPA is simply a withholding statute, its history suggests the opposite. It does not serve as a blanket ban on the release of all education records in all circumstances. Rather, it was designed only to deter disclosure policies that followed systemic and indiscriminate releases of student data as opposed to targeted, individual releases. *See Ellis*, 309 F.Supp.2d at 1023-24; *Bauer v. Kincaid*, 759 F. Supp. 575, 590 (W.D. Mo. 1991) ("The underlying purpose of FERPA was not to grant individual students a right to privacy or access to educational records, but to stem the growing policy of many institutions to carelessly release educational information."). Viewed correctly, it operates more as a best practices policy for records management.

Hence, FERPA is not an absolute bar to a state public records request. Singular requests do not implicate the blind, bulk releases envisioned in FERPA and still must be subject to review for proper redaction under state law for public records exemptions covering such things as personal privacy or privileged communications. In *Jensen*, the Tenth Circuit Court of Appeals approved of the "targeted, discrete" disclosure of disciplinary information to parents. *Jensen*, 3 Fed. Appx. at 910. In *Maynard v. Greater Hoyt Sch. Dist. No. 61-4*, the U.S. District Court for the District of South Dakota did the same. *See Maynard*, 876 F.Supp. 1104 (D.S.D. 1995). It found that a release of school expenditures related to a particular student was necessary to comply with state laws requiring the publication of meeting minutes as well as publication of expenditures made and who received a particular payment noting that "[n]o case has ever held that FERPA preempts the South Dakota statutes at issue or similar state laws." *Id*. at 1108.

Moreover, as FERPA was never intended to allow institutions to hide corrupt activity from the public, in specific instances it must yield to overriding public interest concerns despite any potential privacy interests. As the Georgia Supreme court stated in *Red & Black*:

> We are mindful that openness in sensitive proceedings is sometimes unpleasant, difficult, and occasionally harmful. Nevertheless, the policy of this state is that the public's business must be open, not only to protect against potential abuse, but also to maintain the public's confidence in its officials. *Red & Black Publ'ing Co., Inc.*, 427 S.E.2d at 263.

This is most certainly the case when individuals are engaged in a fraud on taxpayers and students. One cannot reasonably maintain an expectation of privacy in controversial, embarrassing or corrupt acts. As this Court has observed, even private figures cannot maintain claims of privacy violations when they simply wish to potentially hide embarrassing yet newsworthy facts about themselves. *See Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222 (7th Cir. 1993). To this end, this Court has even held that the interest in releasing records that personally identify students can at times outweigh any potential privacy rights and hence not violate FERPA. *See Disability Rights Wis., Inc. v. State of Wis. Dep't of Pub. Instr.*, 463 F.3d 719 (7th Cir. 2006).

In the instant case, University officials and parents knew exactly what they were doing when they decided to bypass the merit-based application system. They cannot now claim any reasonable right to privacy to cover their actions, as it is far outweighed by the newsworthiness of the scandal and the right of the public to hold accountable those responsible for perpetrating a fraud. Given that FERPA exists to deter formal policies of mass disclosure and courts have found that its restrictions are not absolute, the records at issue here fall squarely among those for which there is no legitimate interest in confidentiality. To so find would implicitly sanction the shadow admissions system.

Indeed, the entire premise of open government is thwarted as such laws exist in large measure to open state activity to public scrutiny. The balance of equities in this case tips in favor of disclosure. As federal court's interpreting privacy protections under the federal Freedom of Information Act have found, "courts favor disclosure under the FOIA balancing test when a government official's actions constitute a violation of public trust." *Cochran v. United States*, 770 F.2d 949, 956 (11th Cir. 1985). As all the players in this fraud were complicit, the public has an equal right to know what private figures were involved as well.

CONCLUSION

When a student presents oneself at the Registrar's Office with a request to review his or her "FERPA records," a university has no difficulty understanding what is meant: grades, transcripts, test scores, financial aid records and other core academic information of the kind that is centrally stored for easy reference. The college does not embark on a campus-wide search for every memo, letter and email in which the student may be mentioned. Nor would such a search make sense given the purpose and intent of FERPA; a student would have neither a right nor a need to "correct" erroneous information in, for instance, a copy of a lawsuit settlement.

Even without FERPA, there are safeguards in place to deter the release and publication of non-newsworthy information about private individuals. Every state open records law excludes certain categories of records from disclosure because legislators have decided there is no overriding public interest in the information. These exclusions commonly include medical information, confidential attorney-client communications, and "identity theft" information such as Social Security numbers. Further, almost every state open records law—including Illinois'—incorporates a discretionary balancing test that enables an agency to refuse a request for records if disclosure would constitute an unwarranted invasion of individual privacy. Moreover, every

state recognizes a tort claim for invasion of privacy if severely embarrassing and non-newsworthy personal information is published without consent.

The "sky-is-falling" notion that FERPA is the only thing standing in the way of neon highway billboards flashing named students' IQ scores ignores the numerous other safeguards that, in the ordinary case that does not involve public corruption, would preclude release and dissemination of non-newsworthy student confidences. The University has forfeited the right to insist that the public blindly trust what is being done behind its closed doors. That trust was extended for many years, and it was abused. The self-defeating literalism urged by the University and its *amici* supporters is the same literalist extremism that led the University of Wisconsin-Milwaukee to erase student voices from the audiotapes of public meetings, and led the University of Virginia to insist that students sign away their right to publicly discuss their own rape cases. FERPA may be capable of being stretched to legitimize such absurdities, but it need not be, and if the public is to exercise meaningful supervision over the public officials running its educational institutions, it should not be.

For these reasons, *amici* respectfully request that this Court apply the limited, common-sense approach to FERPA records management that an overwhelming majority of courts have adopted. It should affirm the lower court's ruling holding that FERPA does not mandate withholding records documenting the abusive "Category I" shadow admissions process that placed political favors and monied interests before the University's professed policy of merit-

based admissions.

Dated: August 19, 2011
Arlington, VA

Respectfully submitted,

By: /s/ Lucy A. Dalglish

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CERTIFICATE OF COMPLIANCE
PURSUANT TO FED. R. APP. P. 32(A)(7)(C) AND CIR. R. 32(B)

I hereby certify that the foregoing brief *amici curiae* complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 6,999 words, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii). Further, I certify that the foregoing brief *amici curiae* complies with the typeface requirements of Cir. R. 32(b) and the type style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word 2010 in 12-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2011, I

- Electronically filed in searchable Portable Document Format the foregoing brief *amici curiae* with the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system;
- Caused to be served for filing with the Court one original and fourteen true and correct copies of the foregoing brief *amici curiae* by first-class mail, postage prepaid; and
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ADDENDUM

Descriptions of *amici curiae*:

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.

The **Student Press Law Center** ("SPLC") is a non-profit, non-partisan 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. The SPLC provides free legal assistance, information and educational materials for student journalists on a variety of legal topics.

ABC, Inc. alone and through its subsidiaries owns and operates, inter alia, ABC News, abcnews.com, the ABC Television Network and local broadcast television stations including WABC-TV in New York City that regularly gather and report news to the public. Programs produced and disseminated by ABC News include World News Tonight with Diane Sawyer, 20/20, Nightline, Good Morning America and This Week with Christiane Amanpour.

Advance Publications, Inc., directly and through its subsidiaries, publishes 18 magazines with nationwide circulation, daily newspapers in over 20 cities and weekly business journals in over 40 cities throughout the United States. It also owns many Internet sites and has interests in cable systems serving over 2.3 million subscribers.

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

The Associated Press ("AP") is a global news agency organized as a mutual news cooperative under the New York Not-for-Profit Corporation Law. AP's members include approximately 1,500 daily newspapers and 25,000 broadcast news outlets throughout the United States. AP has its headquarters and main news operations in New York City and has staff in 321 locations worldwide. AP news

reports in print and electronic formats of every kind, reaching a subscriber base that includes newspapers, broadcast stations, news networks and online information distributors in 116 countries.

The **Association of Capitol Reporters and Editors** was founded in 1999 and has approximately 200 members. It is the only national journalism organization for those who write about state government and politics.

Atlantic Media, Inc. is a privately held integrated media company that publishes *The Atlantic*, *National Journal* and *Government Executive*. These award-winning titles address topics in national and international affairs, business, culture, technology and related areas, as well as cover political and public policy issues at federal, state and local levels. *The Atlantic* was

founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others.

Bloomberg L.P., based in New York City, operates Bloomberg News, which is comprised of more than 1,500 professionals in 145 bureaus around the world. Bloomberg News publishes more than 6,000 news stories each day, and The Bloomberg Professional Service maintains an archive of more than 15 million stories and multimedia reports and a photo library comprised of more than 290,000 images. Bloomberg News also operates as a wire service, syndicating news and data to over 450 newspapers worldwide with a combined circulation of 80 million people, in more than 160 countries. Bloomberg News operates cable and satellite television news channels broadcasting worldwide; WBBR, a 24-hour business news radio station which syndicates reports to more than 840 radio stations worldwide; Bloomberg Markets and Bloomberg BusinessWeek Magazines; and Bloomberg.com, which receives 3.5 million individual user visits each month.

Dow Jones & Company, Inc. is the publisher of The Wall Street Journal, a daily newspaper with a national circulation of over two million, WSJ.com. a news website with more than one million paid subscribers, Barron's, a weekly business and finance magazine, and through its Dow Jones Local Media Group, community newspapers throughout the United States. In addition, Dow Jones provides real-time financial news around the world through Dow Jones Newswires as well as news and other business and financial information through Dow Jones Factiva and Dow Jones Financial Information Services.

The E.W. Scripps Company is a diverse, 131-year-old mmedia enterprise with interests in television stations, newspapers, local news and information web sites, and licensing and syndication. The company's portfolio of locally focused media properties includes: 10 TV

stations (six ABC affiliates, three NBC affiliates and one independent); daily and community newspapers in 13 markets; and the

Washington, D.C.-based Scripps Media Center, home of the Scripps Howard News Service.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

Gannett Co., Inc. is an international news and information company that publishes 82 daily newspapers in the United States, including *USA TODAY*, as well as hundreds of non-daily publications. In broadcasting, the company operates 23 television stations in the U.S. with a market reach of more than 21 million households. Each of Gannett's daily newspapers and TV stations operates Internet sites offering news and advertising that is customized for the market served and integrated with its publishing or broadcasting operations.

The McClatchy Company publishes 31 daily newspapers and 46 non-daily newspapers throughout the country, including the Sacramento Bee, the Miami Herald, the Kansas City Star and the Charlotte Observer. The newspapers have a combined average circulation of approximately 2.5 million daily and 3.1 million Sunday.

National Press Photographers Association ("NPPA") is a nonprofit organization dedicated to the advancement of photojournalism in its creation, editing and distribution. NPPA's almost 8,000 members include television and still photographers, editors, students and representatives of businesses that serve the photojournalism industry. Since 1946, the NPPA has

vigorously promoted freedom of the press in all its forms, especially as that freedom relates to photojournalism.

NBCUniversal Media, LLC is one of the world's leading media and entertainment companies in the development, production and marketing of news, entertainment and information to a global audience. Among other businesses, NBCUniversal Media, LLC owns and operates the NBC television network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks, including MSNBC and CNBC, and a television-stations group consisting of owned-and-operated television stations that produce substantial amounts of local news, sports and public affairs programming. NBC News produces the "Today" show, "NBC Nightly News with Brian Williams," "Dateline NBC" and "Meet the Press."

The New York Times Company is the publisher of The New York Times, the International Herald Tribune, The Boston Globe and 15 other daily newspapers. It also owns and operates more than 50 web sites, including nytimes.com, Boston.com and About.com.

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

The Newspaper Guild – CWA is a labor organization representing more than 30,000 employees of newspapers, newsmagazines, news services and related media enterprises. Guild representation comprises, in the main, the advertising, business, circulation, editorial,

maintenance and related departments of these media outlets. The Newspaper Guild is a sector of the Communications Workers of America. CWA is America's largest communications and media union, representing over 700,000 men and women in both private and public sectors.

The Newsweek/Daily Beast Company LLC publishes *Newsweek* magazine and operates the web site TheDailyBeast.com. Through nine print editions, *Newsweek* magazine appears weekly in more than 170 countries and is read by 19 million people. The Daily Beast was launched in 2008 by Tina Brown and Barry Diller of IAC. It is a multi-platform brand consisting of a news and current affairs web site that attracts an average of 6 million unique visitors per month from around the world, as well as a conference division and a book publishing imprint.

North Jersey Media Group Inc. ("NJMG") is an independent, family-owned printing and publishing company, parent of two daily newspapers serving the residents of northern New Jersey: The Record (Bergen County), the state's second-largest newspaper, and The Herald News (Passaic County). NJMG also publishes more than 40 community newspapers serving towns across five counties, including some of the best weeklies in the state. Its magazine group produces high-quality glossy magazines including "(201) Best of Bergen," nearly a dozen community-focused titles and special-interest periodicals such as The Parent Paper. The company's Internet division operates many news and advertising web sites and online services associated with the print publications.

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

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