No. 09-1279

IN THE
Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,

Petitioners,

v.

AT&T, INC. AND COMPTEL,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF *AMICI CURIAE* OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND TWENTY TWO MEDIA ORGANIZATIONS IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether Exemption 7(C) of the federal Freedom of Information Act, 5 U.S.C. § 552(b)(7)(C), which exempts from mandatory disclosure records or information compiled for law enforcement purposes when such disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy" was ever intended to protect purported "personal privacy" rights of corporate entities.

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STATEMENT OF INTEREST[1]

Amici curiae, described fully in Appendix A, are The Reporters Committee for Freedom of the Press and twenty two media organizations — ALM Media, LLC, the American Society of News Editors, The Associated Press, the Association of American Publishers, Inc., Bay Area News Group, Bloomberg L.P., the Citizen Media Law Project, Daily News, L.P., Dow Jones & Company, Inc., The E.W. Scripps Company, the First Amendment Coalition, First Amendment Project, Gannett Co., Inc., NBC Universal, Inc., the National Press Photographers Association, Newspaper Association of America, The New York Times Co., NPR, Inc., The Society of Professional Journalists, Stephens Media LLC, Tribune Company and The Washington Post.

This case concerns an issue critical to the public and the media: whether exemption 7(C) of the federal Freedom of Information Act (hereinafter "FOIA"), 5 U.S.C. § 552(b)(7)(C), (hereinafter "Exemption 7(C)") should be interpreted to allow corporate entities to assert a right of "personal privacy" that has heretofore never been recognized. Exemption 7(C) has—until the lower court's ruling below—rightfully been interpreted as only providing protection against the

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[1] Pursuant to Sup. Ct. R. 37, counsel for *amici curiae* declare that they authored this brief in total with no assistance from the parties; that no individuals or organizations other than *amici* made a monetary contribution to the preparation and submission of this brief; that counsel for all parties were given timely notice of the intent to file this brief; and that written consent of all parties to the filing of the brief *amici curiae* has been duly filed with the Clerk.

disclosure of records that could reasonably constitute an unwarranted invasion of the personal privacy rights of *individuals*. Allowing a corporate entity to assert similar rights under Exemption 7(C) runs counter to the plain meaning of the term "personal privacy."

Since FOIA was amended in 1974 to include Exemption 7(C), it has been found to protect—much like the similar privacy protection language of 5 U.S.C. § 552(b)(6) (hereinafter "Exemption 6")—the personal privacy rights of individuals only. To recognize a corporation's right to invoke Exemption 7(C) would drastically change how FOIA has been interpreted. Not only would it alter how agencies respond to future FOIA requests, but it would also severely inhibit the public's ability to keep a check on corporate behavior and government regulatory functions, requiring the public to argue that disclosure is in the public interest and outweighs a corporation's right to "personal privacy" on every claim involving any law enforcement investigation of a corporation.

FOIA already contains specific exemptions that sufficiently protect the confidentiality needs of corporations and other business entities. The existing lack of protection for public disclosures that may be merely embarrassing or call into question a corporation's business or ethical standards, and the lack of judicial recognition of a corporate privacy right heretofore is intentional. Corporate concerns do not echo those of individuals who have been granted qualified protections under Exemption 7(C). This Court should not indulge corporations in any attempt to circumvent FOIA for fear of negative publicity.

At stake is the media's ability to serve its constitutionally protected "watchdog" function by ensuring that government agencies are properly and effectively exercising their regulatory functions. Allowing corporations to keep secret results of government investigations due to the risk of negative exposure that may accompany the public disclosure of such reports would serve to insulate corporate activity from journalists and other public interest watchdog groups that work to maintain accountability and keep the public informed.

Recognizing corporate "personal privacy" rights claims under Exemption 7(C) would severely hinder the ability of journalists to investigate and report the actions of the country's most powerful entities and at the same time frustrate the media's ability to ensure that federal regulators are enforcing the law and keeping the public safe.

SUMMARY OF ARGUMENT

While corporate protections against certain records disclosures exist under FOIA for matters that are properly classified as trade secrets or confidential business information, the disclosure of which would result in actual competitive harm, courts have consistently recognized that routine operating matters related to professional business conduct are not properly defined for purposes of FOIA as matters invoking any legitimate privacy interest.

More specifically, courts have gone so far as to reject the application of Exemption 7(C) when the records at issue relate to business dealings as opposed to personal, intimate facts. This is so even when the records relate to the business affairs of individuals, not just corporate or other business entities. Addi-

tionally, within the context of Exemption 4 to FOIA, 5 U.S.C. § 552(b)(4) (hereinafter "Exemption 4"), which protects against the disclosure of trade secrets and other confidential business information, courts have also refused to hold that Exemption 4 prevents the disclosure of information that may simply be embarrassing or otherwise not in a business entity's interest to have disclosed.

Clearly, FOIA draws distinct lines between information that is truly of a private nature in both the individual and corporate context, providing withholding protections for only that limited class of records that truly implicate intimate, confidential matters in which the public has no significant interest outweighing non-disclosure.

Finally, upholding the lower court's ruling will have a detrimental impact on the media's ability to meaningfully inform the public on matters related to a variety of public safety, health and welfare issues. As the select news story examples following illustrate, the media regularly use public record data regarding regulatory investigations and citation data regarding corporations to hold corporate behavior—as well as those charged with ensuring lawful corporate compliance—accountable to the public.

Should this Court uphold the lower court's ruling and expand the meaning of "personal privacy" under Exemption 7(C) to include corporate entities, the public faces a situation where corporations will have the ability to potentially block the disclosure of a variety of records that would simply be embarrassing or otherwise not in the interest of the corporation to disclose. Indeed, Exemption 7(C) runs the risk of becoming nothing more than a corporate public relations tool.

Further, given such newfound power, the public and the media will likely be forced to file costly and protracted FOIA lawsuits in which they will be required to successfully argue why a particular disclosure would not be unwarranted under the circumstances and in the public interest any time they seek law enforcement-related records that potentially place a corporate entity in a negative light. FOIA was never intended to create such practical barriers to access in records for which a right to "personal privacy" does not properly apply.

ARGUMENT

I. FOIA rejects the application of personal privacy protections for business-related conduct and similar business attempts to avoid disclosure of embarrassing business information.

A. Exemption 7(C) has always been applied solely to individuals to protect intimate, personal details unrelated to business conduct.

Exemption 7(C) protects against records disclosures that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). This exemption has always been used to protect individuals from the release of highly personal, intimate information. The Court should not concede to corporations a right to personal privacy that was never intended by Congress and, until now, never recognized by the lower courts.

Throughout its history, Exemption 7(C) has been applied to prevent the disclosure of documents, or

parts of documents, that uniquely identify individuals and concern intimate personal details "such as marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcoholic consumption, family fights, and reputation." *Washington Post Co. v. U.S. Dep't of Justice*, 863 F.2d 96, 100 (D.C. Cir. 1988) (citing *Sims v. CIA*, 642 F.2d 562, 574 (D.C. Cir. 1980)). Records regarding personal details such as "rap sheets" and death scene photographs are the kinds of records the Court has properly found withheld under the ambit of Exemption 7(C). *See U.S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989); *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157 (2004). However, when the concern is not necessarily about individuals, but related to business dealings, courts have consistently rejected Exemption 7(C)'s application. *See Washington Post*, 863 F.2d 96 (D.C. Cir. 1988); *Cohen v. Envtl. Prot. Agency*, 575 F.Supp. 425 (D.D.C. 1983); *Center to Prevent Handgun Violence v. U.S. Dep't of the Treasury*, 981 F.Supp. 20 (D.D.C. 1997).

This Court has heard two prior cases concerning Exemption 7(C), both involving individuals claiming personal privacy violations. *See Reporters Committee*, 489 U.S. 749 (1989); *Favish*, 541 U.S. 157 (2004). While these cases admittedly did not address whether a corporation can assert a "personal privacy" right under Exemption 7(C), they are nonetheless instructive as to the scope of the exemption. In *Reporters Committee*, this Court held that compiled criminal rap sheets were exempt from disclosure because releasing them would reveal very little about the actions of the Department of Defense, but would in fact reveal a wealth of information about an individual in

a concise record that the Court ruled to be an invasion of personal privacy. *See Reporters Committee*, 489 U.S. at 774, 780. In so doing, the Court focused on the impact on individuals and found that because intimate details of their personal lives, that is a complete summary of one's entire criminal history, would be exposed, their personal privacy would be violated by disclosure. *See id* at 780. Of note, the Court did not hold that individual entries within a rap sheet are necessarily private, although the lower court's ruling in the instant case opens the door to allow a corporation to assert such a claim. Unlike an individual, a corporation does not have intimate, individually attributable details like those contained in criminal rap sheets. Indeed, public corporations, including AT&T, are required to disclose a wealth of information to the public under SEC regulations. There is simply no aspect of corporate life that is analogous to what was protected in *Reporters Committee*.

Further, in *Nat'l Archives and Records Admin. v. Favish*, the Court addressed the issue of whether death scene photographs of Clinton administration attorney, Vincent Foster, who died of an apparent suicide should be released against the wishes of Mr. Foster's family. *See Favish*, 541 U.S. at 160. Again, in *Favish* it was an individual's right to personal privacy under Exemption 7(C) and the intimate nature of the grieving process that was at issue. *See id*. at 167-8, 172. Corporations have no analogous personal moments in which to claim similar rights as they do not experience privacy harms resulting from personal traumas.

Recognizing that Exemption 7(C) is intended only to apply to individuals' intimate lives and related

emotional harms that only human beings can be capable of suffering as a result of disclosing private information, courts have flatly rejected its applicability to professional, business-related information. Courts have consistently rejected the idea that Exemption 7(C) protects business conduct because such action is not strictly limited to one's personal, family life as they involve relationships with third parties.

In *Washington Post v. U.S. Dep't of Justice*, 863 F.2d 96 (D.C. Cir. 1988), *Cohen v. Envtl. Prot. Agency*, 575 F.Supp. 425 (D.D.C. 1983) and *Center to Prevent Handgun Violence v. U.S. Dep't of the Treasury*, 981 F.Supp. 20 (D.D.C. 1997), the documents being sought under FOIA related to the business dealings of a company and its employees. In all three cases, courts drew a sharp line separating Exemption 7(C)'s coverage of personal details from those documents that discussed business dealings and business relationships. All three cases held that business dealings were not the type of information protected by Exemption 7(C).

In *Washington Post*, the newspaper had requested access to a report compiled by a drug company that was later provided to the Food and Drug Administration and the Department of Justice when the two agencies conducted independent investigations. The report detailed the circumstances that led to the development and marketing of an arthritis drug that was later recalled after it caused severe, adverse reactions in consumers including, in some instances, death. *See Washington Post*, 863 F.2d at 98-99.

While leaving open the possibility of another FOIA exemption applying, the *Washington Post* court held that Exemption 7(C) did not apply to the report

because it concerned business judgments and relationships and not information of an intimate, personal nature as intended by the exemption. *See id.* at 100. Even if the information contained within the report could tarnish one's professional reputation, the court held, the documents were not within the exemption's purview. *See id*. Again, focusing on the privacy rights of individuals, the court made an important distinction between the documents discussing general business dealings and Exemption 7(C)'s scope stating that the exemption could only apply if an individual employees' privacy interests in personally being accused of a crime were implicated. *See id.* at 100-01. "The report . . . would not reveal anything of a private nature about any employees mentioned, as it is an investigation and assessment of the business decisions . . . It may be that such a report, if it accused individual employees of having committed a crime, would implicate the privacy interest of personal honor." *Id.*

Much like in *Washington Post*, the court in *Cohen* held that Exemption 7(C) did not apply because the documents requested under FOIA identified only the business actions and not the personal lives of the individuals named within the documents. *See Cohen*, 575 F.Supp. at 429. In *Cohen*, the court had to decide whether the names of the recipients of Environmental Protection Agency "Potentially Responsible Party" notice letters should be revealed. *See id.* at 426. Notice letters were sent to handlers of hazardous wastes to inform them that they were potentially responsible for environmental clean up and remediation costs at various sites around the country. *See id.* In denying access to the letters, the EPA argued that the recipients would be subject to harassment, criti-

cism and damage to their reputations if their names were released. *See id.* at 429.

In response, the *Cohen* court held that Exemption 7(C) only protected those intimate details of a private citizen's life such as marital status, family fights, and legitimacy of children. *See id.* at 429, (citing *Rural Hous. Alliance v. U.S. Dep't of Agric.*, 498 F.2d 73, 77 (D.C. Cir. 1974)). Exemption 7(C), the court held, "does not apply to information regarding professional or business activities." *Id.* at 429. The risk of harming a professional reputation, the court held, does not implicate Exemption 7(C). *See id.* Because the individuals in question are referenced in the documents "only in their public roles as users of hazardous waste," the court held that no exemption under FOIA, including Exemption 7(C), applied to the documents in question and therefore the documents must be released. *Id.* at 429-31.

Subsequent to *Cohen*, the U.S. District Court for the District of Columbia again found that individuals have no privacy rights in their business dealings when it held that Bureau of Alcohol, Tobacco and Firearms reports detailing the sale of multiple firearms to single buyers must be released with the gun seller's names included. *See Center to Prevent Handgun Violence*, 981 F.Supp. at 25. The court held that the gun sellers "have no privacy interest in the contents of multiple sales reports that is protected by Exemption 7(C)." *Id.* at 23. Because the gun sellers are business actors and they were not implicated in any crimes, Exemption 7(C) does not apply. *See id.* Exemption 7(C), the court held, did not apply to business judgments and business relationships. *See id.*

Other courts that have not categorically rejected Exemption 7(C) as a basis to keep business-related records secret have nonetheless discounted individual privacy rights in such documents. *See Oregon Natural Desert Ass'ns v. U.S. Dep't of Interior*, 24 F.Supp. 2d 1088, 1092-93 (D. Or. 1998). Although it questioned whether Exemption 7(C) should ever be applied to the business related conduct of an individual, the court declined to strictly follow the out of circuit precedent of *Cohen*. *See id.* at 1092. Nonetheless, given the business relationship the individuals had with the government, it held that little weight should be given to the privacy interests of the cattle ranchers whose names would be revealed because the information was "not the highly personal information . . . like the rap sheets in *Reporters Committee*." *Id.* at 1093. The court held that the ranchers were not merely private citizens in the case, but business actors, so the privacy interest was greatly lessened and far inferior to the public interest in disclosure of the records, therefore Exemption 7(C) did not apply to the records. *See id.* at 1093-94.

To be sure, Exemption 7(C) was never intended to impart personal privacy protection in corporate activity. In fact, the above cases clearly show that the scope of records intended to be protected under Exemption 7(C) mirrors that of those found exempt under a similar FOIA privacy exemptions under Exemption 6 which allow agencies to withhold records of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The *Cohen* court makes an explicit observation about the relationship between the two exemptions. The difference between Exemption 6 and

Exemption 7(C) "lies in the standard of review and not in the relevant privacy interests covered." *Cohen*, 575 F. Supp. at 429, n.6. *See also*, *Oregon Natural Desert Ass'n*, 24 F.Supp. 2d at 1092 (citing *Rosenfeld v. United States Dep't of Justice*, 57 F.3d 803 (9th Cir. 1996) and noting that the distinctions between Exemption 6 and Exemption 7(C) lie in the weight given to balancing privacy and access interests and not to the scope of information covered under each exemption). Exemption 7(C) has been treated as protecting the same rights as Exemption 6 and the Court should continue to recognize Exemption 7(C) as protecting only those intimate, personal details that can only be raised by a private citizen.

In summation, the kinds of information that have been recognized as protected by Exemption 7(C) have no counterpart in the corporate world. Courts have consistently denied individuals the protection of Exemption 7(C) when their conduct is business related. Corporations have no purpose outside the business realm and, therefore, should not be granted a greater privacy right than the courts have given to individuals. If individuals cannot claim a right to "personal privacy" in business-related records, it stands to reason that corporations cannot claim a right to "personal privacy" in any corporate records as they naturally relate to business activities. This Court should therefore not interpret Exemption 7(C) in a way that recognizes "personal privacy" rights for corporations.

B. Exemption 4, which protects against the disclosure of information that could result in competitive harm, has repeatedly been held not to cover embarrassing information or information that may tarnish reputation.

Though it did not raise such an argument, should AT&T have any basis to protect the information at issue in this case, it properly lies under Exemption 4 as it addresses the kinds of information corporations have a legitimate reason to keep confidential. However, AT&T would necessarily fail under an Exemption 4 analysis as courts have routinely denied to find protection from embarrassment or unwanted publicity as a basis for withholding. Instead, AT&T now attempts to bypass Exemption 4 by relying on a strained interpretation of Exemption 7(C). Congress and the courts fail to protect corporations from embarrassment under Exemption 4, not because relief is to be found under Exemption 7(C), but rather because a corporation's interactions with government and the public are not the kinds of activities the disclosure of which by and large jeopardize competitive advantage.

Exemption 4 protects from mandatory disclosure corporate information that is considered "trade secrets and commercial or financial information." 5 U.S.C. § 552(b)(4). Exemption 4 was created to encourage corporate cooperation in agency investigations and to protect corporations from the release of private, commercial information that could result in competitive harm if it were to be obtained by third-party competitors. *See Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 767-68 (D.C. Cir. 1974).

To be found exempt from disclosure under Exemption 4, the documents at issue must be a trade secret or found to be "confidential." 5 U.S.C. § 552(b)(4). The test for determining whether a document is confidential under FOIA is set forth in *Nat'l Parks & Conservation Ass'n v. Morton*. 498 F.2d at 770. In that case, the court held that a document "is 'confidential' for the purposes of the exemption if the disclosure of the information is likely to . . . cause substantial harm to the competitive position of the person from whom the information was obtained." *Id*. To fall under Exemption 4, the requirement involves "both a showing of actual competition and a likelihood of substantial competitive injury." *CNA Fin. Corp. v. Donovan* 830 F.2d 1132, 1152 (D.C. Cir. 1987).

Under this standard, many companies have attempted to argue that harm to their reputation constitutes the type of harm contemplated by the statute and by the court in *National Parks*. However, courts have rejected this idea, finding that reputational harm is not protected by Exemption 4.

An early case to address claims of reputational harm under Exemption 4 was *Public Citizen Health Research Group v. Food and Drug Administration*, which in part relied on a 1981 law review article to conclude that Exemption 4 does not protect against such harms. *See Public Citizen*, 704 F.2d 1280, 1291. In *Public Citizen*, the court found that reports detailing the health and safety of an eye-care product was not a trade secret under Exemption 4 and therefore would only be exempt if the reports constituted "confidential commercial information." *Id.* at 1290. In defining the standard for proving competitive harm, the court emphasized a point from the law review article that competitive harm is only that which flows "from the affirmative use of proprietary information *by competitors*." *Id.* at 1291 n.30 (citing Mark Q. Connelly, *Secrets and Smokescreens: A Legal and Economic Analysis of Government Disclosures of Business Data*, 1981 Wis. L. Rev. 207, 235-36 (1981)) (emphasis in original).

Connelly's article continued to state that "[c]ompetitive harm should not be taken to mean simply any injury to competitive position, as might flow from customer or employee disgruntlement or from the embarrassing publicity attendant upon public revelations." Connelly, *supra*, at 235-36. The Seventh Circuit U.S. Court of Appeals also adopted the idea that competitive harm under Exemption 4 does not include embarrassing facts in *General Electric Co. v. U.S. Nuclear Regulatory Comm'n*. 750 F.2d 1394, 1402 (7th Cir. 1984). General Electric was attempting to keep secret a report about GE's "boiling water" nuclear reactor which included some criticism of the safety and design of the reactor. *See id*. at 1396. In rejecting GE's competitive harm argument, the court held that "the competitive harm that attends any embarrassing disclosure is not the sort of thing that triggers exemption 4." *Id*. at 1402.

Similarly, in *CNA Fin. Corp. v. Donovan*, CNA was attempting to prevent disclosure of records detailing the company's hiring and promotion practices that were on file with the Department of Labor. *CNA Fin. Corp*., 830 F.2d at 1134. Among the information contained in the records were statistics on the racial and sexual composition of the company's employees and the racial and sexual makeup of applicants hired and of employees promoted internally, statistics that CNA was required to submit to the

government as a condition of a contract. *See id*. at 1154. CNA argued that it would be competitively harmed because the reports could cause negative publicity and cause its employees to be "demoralized." *Id.* The court rejected this argument, holding that "such complaints [are] unrelated to the policy behind Exemption 4." *Id.*

When the government regulates an industry or contracts to private companies, the public has a right to know that the government is doing its job and upholding its laws. If companies like CNA were allowed to keep secret the results of government investigations or government compliance reports, the general public would have no way to ensure accountability. The *CNA* court correctly found that the potential embarrassment for CNA was not a valid claim.

In 2010, the U.S. Court of Appeals for the District of Columba once again rejected the argument that bad publicity or embarrassment could amount to competitive harm under Exemption 4 in *United Technologies Corp. v. U.S. Dep't of Defense*. *See* 601 F.3d 557 (D.C. Cir. 2010). The *United Technologies* court was reviewing a Department of Defense decision to release records that evaluated the quality control processes of helicopter and aircraft engine manufacturers. *See id*. at 559. The manufacturers claimed, among other things, that the release of these records could make potential customers doubt the quality of their products and their reputations would suffer. *See id*. at 563.

The court ultimately held that the documents were exempt because technical information contained within the reports could be used by competitors, but the court also addressed the manufacturer's reputational harm argument. *See id*. at 563-64. "Calling customers' attention to unfavorable agency evaluations or unfavorable press does not amount to an 'affirmative use of proprietary information by competitors.'" *Id*. (citing *CNA Fin. Corp*., 830 F.2d at 1154 & n.158). As it has since *Public Citizen* in 1983, the court held that Exemption 4 does not protect a corporation from the threat of bad publicity or embarrassment. *See id*. at 564.

Exemption 4 is meant to protect corporations from the damage that can occur from the release of documents that are generated or collected by government agencies. Over the years, courts have specifically refused to extend Exemption 4 beyond actual competitive harm that would be inflicted by a competitor to include embarrassment and bad publicity. This Court should not allow AT&T and other corporate entities to circumvent well-established law denying corporate reputational embarrassment and similar claims by allowing them to assert personal privacy rights under Exemption 7(C). The obvious motive for corporate entities to seek to withhold information would be to avoid the negative consequences be they commercial, legal or otherwise. It is exactly this reasoning that courts have repeatedly rejected under Exemption 4—and AT&T does not raise the claim in this case—and it is instructive in the present case as it demonstrates FOIA's reluctance to recognize any sort of corporate privacy right analogous to individual privacy rights. This Court should find that corporations do not have personal privacy rights and uphold the precedent that embarrassing publicity is not a valid argument under FOIA.

Allowing AT&T and other corporations to assert "personal privacy" under Exemption 7(C) would potentially keep secret a wealth of documents that have previously been held open to public inspection. Agencies will be required to conduct public interest/privacy balancing tests on nearly every document requested that relates to a corporation. The negative effects on the press and the public would be enormous, creating a nearly insurmountable obstacle to access.

II. Recognizing corporate "personal privacy" rights under Exemption 7(C) will hinder journalists' ability to perform their constitutionally protected "watchdog" role and inform the public about corporate action bearing upon public health, safety and welfare.

Creating a new category of privacy for corporations would create a severe impediment to journalists (as well as various public interest stakeholders) that depend on FOIA to enable their "watchdog" function of monitoring government agencies and their regulatory functions and through them the corporate power structure. In this case, AT&T is seeking to block the disclosure of a wealth of records compiled by the FCC in relation to the commission's investigation into whether AT&T overcharged the government for services rendered in connection with its participation in a federal telecommunications buildout program. The public has a great interest in such records as they bear directly upon the public welfare and whether corporations are properly billing the government for taxpayer funded initiatives.

What follows are examples of how journalists have effectively used records detailing government

investigations of corporate behavior for the public good that the lower court's expansion of Exemption 7(C) could make exempt—namely records related to government safety and health inspections.

A. Dangerous Safety Records

In February 2010, Gary Stoller, a reporter for USA Today, used records obtained through federal FOIA over a six-month period to aid in uncovering massive maintenance problems on thousands of U.S. commercial airline flights, as well as lapses in Federal Aviation Administration ("FAA") oversight of airline safety over the past six years. *See* Gary Stoller, *Since 2003, 65,000 U.S. Flights With Maintenance Problems Have Taken Off Anyway*, USA TODAY, Feb. 2, 2010, at 1A. Stoller primarily relied on records obtained from the FAA through FOIA that detailed how, over the past six years, millions of passengers have been on at least 65,000 U.S. flights that should not have taken off because planes were not properly maintained and that unqualified mechanics and lax oversight by airlines and federal authorities are commonplace. *See id.*

The information Stoller obtained through FOIA primarily consisted of government fines against airlines for maintenance violations and penalty letters sent to the airlines. Using these documents, Stoller was able to uncover "repeated instances in the past six years of shoddy maintenance and improper procedures done by ill-trained and ill-equipped workers, even some instances of cover-ups of bad repairs that put fliers' safety in jeopardy." *Id.*

Stoller provided several particularly alarming examples of maintenance problems in his investigation, including, for example, mechanics being assigned to

assess a possible engine leak on a passenger jet who had not received training on engine troubleshooting and who had no maintenance manuals or required tools to address the problems; an Alaska-based airline that sustained several accidents and maintenance violations and that flew passengers on planes with missing, loose, corroded and damaged parts, and whose maintenance personnel falsified repair entries in company logbooks; and an American Eagle plane that took off even though the airline had prior knowledge of problems with the aircraft, and that had flown "in an unairworthy condition" on at least 20 flights. *See id*.

The obtained documents showed that the FAA levied $28.2 million in fines against 25 U.S. airlines for maintenance violations in the past six years. *See id*. However, despite fines and punishments from the FAA, the documents also revealed that airlines often disregarded FAA inspectors' findings and continued to fly aircraft with maintenance issues, deferred necessary repairs beyond required time frames, used unapproved parts and performed maintenance work that was well below federal standards. *See id*.

Thus, it is clear from these findings that FAA oversight and enforcement of many airlines' poor safety records is not strong enough to deter further violations or to truly ensure safety of passengers on U.S. commercial flights. A 2005 report by Dept. of Transportation Inspector General Calvin Scovel, which he delivered to a Congressional House subcommittee, supported this notion, finding that uncertified repair stations were performing maintenance work that is critical to aircraft safety without the FAA's knowledge. *See id*. Scovel said that there may be a lag of months or even years before FAA inspectors conduct an on-site review of maintenance and repair stations after an airline approves them for use. *See id*. He also said this untimely and flawed approval and inspection process has allowed potentially life-threatening maintenance problems to go undetected or to reoccur. *See id*.

Had Stoller not had access to the government's inspection documents, it is uncertain whether the public would have been made aware of the FAA's findings regarding serious maintenance and safety violations on thousands of flights carrying millions of passengers, especially considering that multiple sources, as well as the FAA's own documents, show that the administration is often ineffective in preventing these problems from taking place or reoccurring. If journalists are not allowed access to these types of documents because of asserted privacy rights raised by private entities, the public will be deprived of a wealth of knowledge that government regulators have often proved ineffective at communicating.

In a similar investigation, the *St. Petersburg Times* reviewed hundreds of pages of letters, memos and maintenance records regarding government inspections of the Atlanta-based airline ValuJet released through federal FOIA, focusing primarily on a letter from the FAA requiring the company to get federal approval before purchasing any new aircraft or starting services to new cities. *See* Bill Adair, *FAA Saw ValuJet Trouble Ahead*, ST. PETERSBURG TIMES, June 4, 1996. Federal inspectors had been made aware of several problems to look for when evaluating ValuJet's maintenance and safety procedures, including inexperienced pilots, incomplete paperwork for passengers and cargo, faulty emergency equipment, inadequate safety checks, overuse of outside

contractors for maintenance, and a possible rush to get planes into service. *See id*.

After a series of accidents and other maintenance issues involving the company's planes, the FAA wrote a letter to ValuJet's president ordering the company to cease purchasing new aircraft or starting flight services to new cities without FAA approval. In the letter, the FAA wrote to ValuJet president Lewis Jordan:

> It appears that ValuJet does not have a structure in place to handle your rapid growth and that you may have an organizational culture that is in conflict with operating to the highest possible degree of safety . . . Specifically, it seems that your corporate policies have created a culture that is affecting and influencing the ability of aircraft captains to make safety-oriented decisions. *Id*.

However, the FAA did not publicize its action requesting that ValuJet cease further expansion, and at the time of publication of the Times' article, most major news organizations were not covering the story, and reporters were not inquiring with the FAA about the issue. *See id*.

If the *Times* had been unable to review the FAA's letter and other documents related to ValuJet's safety record, the public might have never learned about the many problems with the company, because the FAA did not make its action public and other reporters were not covering the story. This case shows that journalists are vital to creating public awareness about serious safety issues when federal regulators do not fulfill this role. Surely if a corporate privacy right were to be created under Exemption 7(C), ValuJet would seek to have such information hidden from the public because it is embarrassing, not to mention potentially fatal.

Similar safety issues abound beyond those highlighted above regarding airline safety in other sectors as well. Earlier this year, *Chicago Tribune* reporter Ron Grossman investigated a complaint filed by Matt Simon, a former security guard at an Illinois nuclear plant, who claimed he was terminated for trying to alert management to serious security lapses at the plant. *See* Ron Grossman, *Lawsuit Questions Power Plant's Safety*, CHICAGO TRIBUNE, Apr. 4, 2010.

Using federal FOIA, the *Tribune* obtained a copy of the Department of Labor's investigation report of Simon's complaint, in which he alleged that "there was a consistent policy of dumbing down security training and certifying unqualified guards." *See id*. Simon alleged that rifles and other equipment failed, plant officials filed false security reports with the Nuclear Regulatory Commission and that his firing resulted directly from his speaking out about such security failures. *See id*. The story included specific examples of alleged attempts by the plant to cover up security problems:

> In his complaint, [Simon] said he was warned about keeping the guards' failure rates low. "Managers' bonuses would be affected," Simon wrote. "Therefore managers had a financial incentive to qualify individuals regardless of safety concerns." *Id*.
>
> Simon reported one trainee walked into a glass wall and fell down on the rifle range. "Exelon management," Simon wrote, "made veiled threats and said I should qualify" the

72-year-old guard, who had recently had heart surgery. *Id.*

Grossman further reported that the plant dismissed Simon's allegations after an internal investigation determined they were false. *See id.* His attorneys then filed suit with the Labor Department "requesting a hearing according to a federal law protecting whistle-blowing employees of nuclear power companies," which the department rejected. Simon later appealed that decision, and his attorney argued that the case raised an important question about the larger safety of U.S. nuclear plants. *Id.*

The Project on Government Oversight, a Washington-based whistleblower support group, agreed with the attorney's assertions about plant safety, saying it "has interviewed hundreds of guards at nuclear power plants, many of whom said they weren't adequately trained or equipped." *Id.*

Without access to the Labor Department's investigation of the complaint, the public likely would not have been alerted to these larger security concerns at U.S. power plants, especially since the Labor Department, which is charged with addressing such concerns, initially rejected Simon's request for a hearing. Once again, a corporate right to personal privacy under 7(C) could very well prevent the public from ever knowing about such allegations.

The Arizona Republic conducted an investigation into unsafe conditions at a copper mine near Tucson after a veteran miner was killed in a rock-fall in yet another example of uncovered corporate malfeasance. *See* Craig Harris and Jerry Kammer, *Even Before the Fatal Cave-in, the Feds Were Told That the Copper Mine Near Tucson was Unsafe*, THE ARIZONA

REPUBLIC, Aug. 6, 2000. The *Republic's* investigation, conducted through interviews with miners and regulators and through documents obtained under state and federal FOIA requests, found that federal regulators at the Mine Safety and Health Administration ("MSHA") repeatedly failed to investigate complaints regarding the unsafe conditions at the Asarco Inc. Mission Mine for months prior to the death of the miner. *See id.* The miner himself, along with his family, was among those warning MSHA about the unsafe conditions. *See id.*

The newspaper's investigation found several lapses in safety at the plant, including:

*Mission Mine management refused to regularly install safety bolts, used to prevent falling rocks, despite repeated complaints from miners.

*Miners collapsed and got sick from working without fans in extremely humid areas where temperatures hovered around 100 degrees, while MSHA inspectors rode in Asarco's air-conditioned vehicles to conduct inspections.

*Asarco cordoned off unsafe areas to keep inspectors out even though miners regularly worked there.

*Mine managers ordered a supervisor to "build cases" and fire employees who complained about safety problems.

*The supervisor of the MSHA's Mesa office admitted he didn't take seriously three anonymous safety complaints about the mine that were received months before the acci-

dent. The complaints were from Maria Villanueva, a grown daughter of the dead miner, who said she remained anonymous to prevent retaliation against her father. *Id.*

Although the Arizona Mine Inspector's Office found no violations in all of 1999, including during a November inspection just weeks prior to the January 2000 accident, documents showed that MSHA had been warned about problems at the mine through an anonymous letter it received in January 1999. *See id.* However, MSHA records also showed that the office supervisor did nothing with the letter until March, when MSHA conducted a routine inspection. *See id.* The MSHA records also show that the fallen miner's daughter complained to the same MSHA office three times from May to September 1999, but that the same supervisor did not record the complaints or send an inspector to investigate. *See id.*

The *Republic* reported that after the miner's death, the U.S. Secretary of Labor launched an investigation into MSHA's conduct prior to the accident. *See id.* Davitt McAteer, who headed MSHA at the time, acknowledged the poor oversight by its local office near the mine that ignored the complaints. However, according to the article, "the field supervisor who received the complaints was not punished. Instead, he was transferred to Denver, where his salary was raised." *Id.*

The *Republic*'s investigation into the accident and other mine safety issues was crucial to shedding light on the serious lapses in safety and oversight at the Arizona mine. Without this reporting, it is unclear whether the public would have learned about these problems, especially since the Labor Department did

not even begin an investigation into safety issues regarding the miner's death until six weeks after the *Republic* began its own investigation of MSHA documents and officials. It is also quite possible that the newspaper's action was what spurred the larger Labor Department investigation. Of course, could such documents potentially be withheld under Exemption 7(C), none of this would have potentially come to light.

B. Public Health Violations

Last summer, *USA Today* reporter Gary Stoller undertook yet another investigation of safety concerns at several U.S. airlines, this time regarding unsanitary health conditions related to food provided during in-flight meals. Through a federal FOIA request, Stoller obtained inspection reports from the Food and Drug Administration ("FDA") showing that many meals served on major airlines are prepared in unsanitary and unsafe conditions that could lead to illness, citing three of the largest catering facilities that were suspected for health and sanitation violations. *See* Gary Stoller, *FDA Finds Food Safety Issues at Airline Caterers*, USA TODAY, June 28, 2010; Gary Stoller, *Airline Food Could Pose Health Threat*, DETROIT FREE PRESS, June 28, 2010.

The reports show that these major catering facilities are in violation of a number of health codes by storing food at improper temperatures, using unclean equipment and employing workers with poor hygiene. Several instances of cockroaches, flies and mice ending up in airline food were common. *See* Gary Stoller, *Airline Food Could Pose Health Threat*, DETROIT FREE PRESS, June 28, 2010. Samples from a

kitchen floor of one of the catering companies tested positive for Listeria, a serious and often deadly bacteria. *See* Gary Stoller, *FDA Finds Food Safety Issues at Airline Caterers*, USA TODAY, June 28, 2010. The inspection reports also showed that despite warning letters from the FDA over health and sanitation violations, caterers have continued to ignore FDA health guidelines and requirements on food preparation. *See id*.

In this case, Stoller's access to FDA inspection records was vital to providing information to the public about a serious and potentially life-threatening health issue that could affect millions of travelers on U.S. commercial flights. It is especially important that the public learn this information because of the FDA's inability to ensure that catering companies are following strict public health guidelines, even after warnings have been issued. According to Roy Costa, a public health official consulted for the investigation, "In spite of best efforts by the FDA and industry, the situation with in-flight catered foods is disturbing, getting worse and now poses a real risk of illness and injury to tens of thousands of airline passengers on a daily basis." *See* Stoller, *Airline Food Could Pose Health Threat*, DETROIT FREE PRESS, June 28, 2010.

In a similar investigation published in the *Chicago Tribune*, the *Detroit Free Press* obtained a report through federal FOIA containing statements given by workers and a meat inspector at a Sara Lee Corp. plant in western Michigan to federal criminal investigators at the U.S. Department of Agriculture's ("USDA") Office of the Inspector General. *See* Jennifer Dixon, *Bosses Knew Shipped Meat was Tainted,*

Workers Say, CHICAGO TRIBUNE, Aug. 30, 2001. The workers and the inspector alleged that mangers at the plant knew they were shipping tainted meats just months before people began dying of a nationwide Listeria outbreak in 1998. *See id*.

In the report, one employee told investigators that meat products made at the plant were contaminated with Listeria, and that management was also aware of this fact. *See id*. A federal meat inspector also told investigators that management knew their meat products were tainted, but that they deliberately ignored the law and shipped the food without testing it. *See id*. Eight months after the meat was shipped, a nationwide listeriosis outbreak occurred, killing 15, causing six miscarriages and sickening 101 people. *See id*. Sara Lee recalled 35 million pounds of meat in wake of the outbreak. *See id*.

According to the article, three months prior to the outbreak, investigators found documents showing that the plant issued a credit for over 200 cases of turkey to a business in San Diego after the meat had tested positive for Listeria. *See id*. The meat inspector also told the USDA that plant workers were aware of the listeria problem an entire year before the outbreak. *See id*. The federal investigators' report shows that the inspector told an employee at the plant that it risked violating the law if the tainted meat was shipped, to which the employee replied: "They would never know it was our product since [listeria] has about a two-week incubation period." *Id*. Another employee told investigators that lab workers were instructed by plant management to test only for conditions under which the bacterium can grow, and not for the actual presence of bacteria.

See id. They were also told to keep test results in a special file, and to withhold these results from the USDA, according to the report. *See id*.

Despite these findings, however, federal prosecutors priorly "uncovered no evidence that Sara Lee intentionally distributed the adulterated meat product," charging Sara Lee only with a federal misdemeanor in the 1998-1999 outbreak and forcing the company to pay a fine and donate money to Michigan State University for food safety research. *Id*. In response to this ruling, a former meat-inspection chief at USDA responded, "If [Sara Lee management] set out to defraud the system, they succeeded . . . It's shocking and appalling, and furthermore, it encourages other companies to be criminally lax." *Id*.

Beyond food safety issues, other examples of public health violations by private companies abound. In September 2009, *The New York Times* obtained hundreds of thousands of nationwide water pollution records from the Environmental Protection Agency (EPA) and compiled a national database of water pollution violations that "is more comprehensive than those maintained by states or the E.P.A." *See* Charles Duhigg, *Clean Water Laws Neglected, at a Cost*, N.Y. TIMES, Sept. 13, 2009. The subsequent investigative report produced from this reporting found that:

> In the last five years alone, chemical factories, manufacturing plants and other workplaces have violated water pollution laws more than half a million times. The violations range from failing to report emissions to dumping toxins at concentrations regulators say might contribute to cancer, birth defects and other illnesses. However, the vast majority of those polluters have escaped punishment. State officials have repeatedly ignored obvious illegal dumping, and the [EPA], which can prosecute polluters when states fail to act, has often declined to intervene. *Id*.

The *Times*' story also showed that around one in 10 Americans has been exposed to drinking water containing dangerous chemicals or that fails to meet federal public health standards. *See id*. In one example, some coal companies in West Virginia disclosed to federal regulators that the companies were pumping illegal amounts of chemicals into the ground, resulting in concentrations of arsenic, lead and other dangerous chemicals appearing in local residents' tap water and causing health problems. *See id*. However, state regulators never fined or punished those companies for breaking pollution laws. The story also details at-length the impact this pollution has had on the health of local residents:

> [Jennifer Hall-Massey's] entire family tries to avoid any contact with the water. Her youngest son has scabs on his arms, legs and chest where the bathwater – polluted with lead, nickel and other heavy metals – caused painful rashes. Many of his brother's teeth were capped to replace enamel that was eaten away. Neighbors apply special lotions after showering because their skin burns. Tests show that their tap water contains arsenic, barium, lead, manganese and other chemicals at concentrations federal

> regulators say could contribute to cancer and damage the kidneys and nervous system. *Id.*

This article is another strong example of the power of investigative reporting to reveal the truth by having access to records that could potentially be protected under Exemption 7(C), particularly when federal agencies prove unable, or in this case, unwilling, to hold companies liable for violating health and safety practices.

The above stories are certainly not exhaustive of the wealth of public-interest reporting that is enabled by access to the very records at risk of being closed to the public if the lower court's ruling is allowed to stand. It is clearly evident that the public needs access to inspection reports and similar corporate investigatory records in which businesses would likely claim Exemption 7(C) privacy rights in order to make abuses such as what is detailed herein known. Given its critical importance to the public, such access should not further be conditioned upon having to resort to legal action or otherwise engaging in any public interest argument at the outset of the request lest practical barriers and tactical, defensive postures so frustrate the request process that they work to effectively bar access.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court reverse the decision of the U.S. Court of Appeals for the Third Circuit and hold that corporate entities do not have "personal" privacy rights under Exemption 7(C) and therefore the exemption cannot be invoked by corporations nor relied upon by government agencies as a basis to withhold any record properly requested under FOIA.

Respectfully submitted,

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APPENDIX A

Descriptions of *amici*:

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

ALM Media, LLC publishes over thirty national and regional magazines and newspapers, including The American Lawyer, the New York Law Journal, Corporate Counsel, and the National Law Journal as well as the website Law.com. Many of ALM's publications have long histories reporting on legal issues and serving their local legal communities. ALM's The Recorder, for example, has been published in Northern California since 1877; the New York Law Journal was begun a few years later, in 1888. ALM's publications have won numerous awards for their coverage of critical national and local legal stories, including many stories that have been later picked up by other national media. ALM Media, LLC is privately owned, and no publicly held corporation owns 10 percent or more of its stock.

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 American Publishers, Inc. ("AAP") is the national trade association of the U.S. book publishing industry. AAP's members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses, and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary, and professional markets, scholarly journals, computer software, and electronic products and services. The Association represents an industry whose very existence depends upon the free exercise of rights guaranteed by the First Amendment.

Bay Area News Group is operated by MediaNews Group, one of the largest newspaper companies in the United States with newspapers throughout California and the nation. The Bay Area News Group includes the San Jose Mercury News, Oakland Tribune, Contra Costa Times, Marin Independent Journal, West County Times, Valley Times, East County Times, Tri-Valley Herald, The Daily Review, The Argus, Santa Cruz Sentinel, San Mateo County Times, Vallejo Times Herald, and Vacaville Reporter. These newspapers rely on open government laws, including the federal Freedom of Information Act, to provide vital information to the public about government and corporate activities that affect their lives.

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.

The Citizen Media Law Project ("CMLP") provides legal assistance, education, and resources for individuals and organizations involved in online and citizen media. CMLP is jointly affiliated with Harvard University's Berkman Center for Internet & Society, a research center founded to explore cyberspace, share in its study, and help pioneer its development,

and the Center for Citizen Media, an initiative to enhance and expand grassroots media. CMLP is an unincorporated association hosted at Harvard Law School, a non-profit educational institution.

Daily News, L.P., publishes the New York *Daily News*, a daily newspaper that serves primarily the New York metropolitan area and is sixth-largest paper in the country by circulation. The *Daily News'* website, nydailynews.com, receives approximately 22 million unique visitors 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 media 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.

The First Amendment Coalition is a non-profit public interest organization dedicated to defending

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

First Amendment Project is a nonprofit organization dedicated to providing free legal services on public interest free speech and free press matters to its core constituency of activists, journalists and artists. FAP frequently represents clients in FOIA cases and in doing so frequently encounters exemption 7(C). As many of FAP's clients use FOIA to uncover corporate malfeasance and corporate influence on government, the extension of Exemption 7(C) to corporate privacy would severely limit the ability of FAP's clients to inform the public of important information.

Gannett Co., Inc. ("Gannett") is an international news and information company that publishes 84 daily newspapers in the United States, including USA TODAY, and nearly 850 non-daily publications, including USA Weekend, a weekly newspaper magazine. Gannett also owns 23 television stations, and over 100 U.S. websites that are integrated with its publishing and broadcast operations.

NBC Universal 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, NBC Universal 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." NBC Universal, Inc. is 87.7% owned by National Broadcasting Company Holding, Inc. (a wholly-owned subsidiary of General Electric Company) and 12% by Vivendi, S.A.

The National Press Photographers Association ("NPPA") is a non-profit organization dedicated to the advancement of photojournalism in its creation, editing and distribution. NPPA's almost 9,000 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.

Newspaper Association of America ("NAA") is a non-profit organization representing the interests of more than 2,000 newspapers in the United States and Canada. NAA members account for nearly 90 percent of the daily newspaper circulation in the United States and a wide range of non-daily newspapers. One of NAA's key priorities is to advance newspapers' First Amendment interests, including the ability to gather and report the news.

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.

NPR, Inc. is an award winning producer and distributor of noncommercial news programming. A privately supported, not-for-profit membership organization, NPR serves a growing audience of more than 26 million listeners each week by providing news programming to 285 member stations which are independently operated, noncommercial public radio stations. In addition, NPR provides original online content and audio streaming of its news programming. NPR.org offers hourly newscasts, special features and ten years of archived audio and information. NPR has no parent company and does not issue stock.

The 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.

Stephens Media LLC is a nationwide newspaper publisher with operations from North Carolina to Hawaii. It publishes the largest newspaper in Nevada, the Las Vegas Review-Journal.

Tribune Company operates broadcasting, publishing and interactive businesses, engaging in the coverage and dissemination of news and entertainment programming. On the broadcasting side, it owns 23

television stations, a radio station, a 24-hour regional cable news network and "Superstation" WGN America. On the publishing side, Tribune publishes eight daily newspapers — Chicago Tribune, Hartford Courant, Los Angeles Times, Orlando Sentinel (Central Florida), The (Baltimore) Sun, The Daily Press (Hampton Roads, Virginia) The Morning Call (Allentown, Pa.), and South Florida Sun-Sentinel. Tribune Company is a privately held company.

The Washington Post is a leading newspaper with nationwide daily circulation of over 623,000 and a Sunday circulation of over 845,000.

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