

**United States Court of Appeals**  
*for the*  
**Fourth Circuit**

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UNITED STATES OF AMERICA,

*Plaintiff-Appellant,*

v.

JEFFREY ALEXANDER STERLING,

*Defendant-Appellee,*

and

JAMES RISEN,

*Intervenor-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

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**BRIEF OF ABC, INC., ADVANCE PUBLICATIONS, INC.,  
THE ASSOCIATED PRESS, BLOOMBERG L.P., CABLE NEWS  
NETWORK, INC., CBS CORPORATION, COX MEDIA GROUP, INC., DAILY  
NEWS, L.P., DOW JONES & COMPANY, INC., THE E.W. SCRIPPS  
COMPANY, FIRST AMENDMENT COALITION,  
FOX NEWS NETWORK, L.L.C., GANNETT CO., INC., THE HEARST  
CORPORATION, NATIONAL ASSOCIATION OF BROADCASTERS,  
NATIONAL PUBLIC RADIO, INC., NBCUNIVERSAL MEDIA, LLC,  
THE NEW YORK TIMES COMPANY, NEWSPAPER ASSOCIATION OF  
AMERICA, THE NEWSWEEK/DAILY BEAST COMPANY LLC, RADIO  
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TRIBUNE COMPANY, THE WASHINGTON POST AND WNET AS *AMICI  
CURIAE* IN SUPPORT OF THE PETITION FOR REHEARING *EN BANC* OF  
INTERVENOR-APPELLEE JAMES RISEN**

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## **IDENTITIES AND INTEREST OF *AMICI CURIAE***

*Amici curiae* are media entities and non-profit associations representing professional journalists and media entities, each of which is described more fully in the Addendum. *Amici* are concerned that, if this Court does not revisit the panel majority's unprecedented conclusion—that journalists do not possess a qualified privilege that protects them against the compelled disclosure of their confidential sources in criminal prosecutions—their ability to report on matters of substantial public concern will be significantly impaired.

## **SOURCE OF AUTHORITY TO FILE**

All parties have consented to the filing of this brief as contemplated by Fed. R. App. P. 29(a). In addition, *amici* have sought leave of the Court to file this brief.

## **FED. R. APP. P. 29(C)(5) STATEMENT**

Pursuant to Fed. R. App. P. 29(c)(5), *amici* state that no party's counsel authored this brief; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than *amici*, their members or their counsel—contributed money that was intended to fund preparing or submitting the brief.

## **RULE 35(B) STATEMENT OF PURPOSE**

Pursuant to Rule 35(b), *amici* state that this appeal involves a question of exceptional importance, *i.e.*, whether a journalist seeking to protect the identity of a confidential source from disclosure in a criminal prosecution may be lawfully compelled to do so. In addition, the panel majority's conclusion that there is no reporters' privilege in that context, arising either from the First Amendment or at common law, is in conflict with, among other decisions of this Court, *United States v. Steelhammer*, 539 F.2d 373 (4th Cir. 1976) (Winter, J., dissenting), *adopted en banc*, 561 F.2d 539 (4th Cir. 1977), and *In re Shain*, 978 F.2d 850 (4th Cir. 1992).

## **ARGUMENT**

According to the panel majority:

There is no First Amendment testimonial privilege, absolute or qualified, that protects a reporter from being compelled to testify by the prosecution or the defense in criminal proceedings about criminal conduct that the reporter personally witnessed or participated in, absent a showing of bad faith, harassment, or other such non-legitimate motive, even though the reporter promised confidentiality to his source. In *Branzburg v. Hayes*, 408 U.S. 665 (1972), the Supreme Court "in no uncertain terms rejected the existence of such a privilege."

*United States v Sterling*, No. 11-5028, 2013 WL 3770692, at \*5 (4th Cir. July 19, 2013) (citation omitted). With respect, this analysis misstates the Supreme Court's decision in *Branzburg*, conflicts with, among other decisions of this Court, *United States v. Steelhammer*, 539 F.2d 373 (4th Cir. 1976) (Winter, J., dissenting), *adopted en banc*, 561 F.2d 539 (4th Cir. 1977), and *In re Shain*, 978 F.2d 850 (4th

Cir. 1992), and is inconsistent with the rulings of every other federal appellate court to consider the issue. The panel majority's decision marks the first time a federal appellate court has asserted that there is no First Amendment or common law privilege that protects a reporter from the compelled disclosure of confidential sources in a criminal prosecution. As a result, and as explained further below, it is of exceptional importance that this Court reconsider that holding. *See* Fed. R. App. P. 35 (b).

**First**, the panel majority's decision conflicts with prior rulings of this Court. As the district judge correctly explained, in the context of contested criminal proceedings such as the criminal prosecution in which this subpoena was issued:

[T]he Fourth Circuit recognizes a qualified First Amendment reporter's privilege that may be invoked when a subpoena either seeks information about confidential sources *or* is issued to harass or intimidate the journalist.

*United States v. Sterling*, 818 F. Supp. 2d 945, 951 (E.D. Va. 2011) (emphasis added). This Court first recognized such a privilege in *United States v.*

*Steelhammer*, 539 F.2d 373 (4th Cir. 1976) (Winter, J., dissenting), *adopted en banc*, 561 F.2d 539 (4th Cir. 1977), a civil contempt proceeding. Thereafter, in

*LaRouche v. NBC*, 780 F.2d 1134, 1139 (4th Cir. 1986), a civil defamation action,

the Court established a three-part balancing test to determine when the qualified privilege must yield in a given case. And, in *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000), the Court emphasized that, if reporters were routinely

compelled to disclose their confidential sources, “the free flow of newsworthy information would be restrained and the public’s understanding of important issues and events would be hampered in ways inconsistent with a healthy republic.”

The panel majority discounted this precedent, asserting that “our Circuit has already considered and rejected ‘a qualified [reporters’] privilege, grounded on the First Amendment, against being compelled to testify in [a] criminal trial.’” *Sterling*, 2013 WL 3770692, at \*9 (quoting *In re Shain*, 978 F. 2d 850, 851(4th Cir. 1992)). In fact, however, the panel majority’s description of this Court’s decision in *Shain* is incomplete in material respects. In a portion of its decision not addressed by the panel majority, the Court in *Shain* based its conclusion that the reporters there enjoyed no privilege, not on the fact that they were subpoenaed to testify in the context of a criminal prosecution, but because the subpoena at issue sought only concededly nonconfidential information and there was no evidence that the Government sought their testimony in bad faith. Specifically, the Court explained that it was “the absence of confidentiality *or* vindictiveness in the facts of this case” that “fatally undermine[d]” the reporters’ claim “to a First Amendment privilege.” *Id.* at 853 (emphasis added). As Judge Gregory has observed, “it is clear to me that we have acknowledged that a reporter’s privilege attaches in criminal proceedings given the right circumstances.” *Sterling*, 2013 WL 3770692, at \*37 (Gregory, J., dissenting).

The district court's reading of *Shain* is supported by Judge Winter's dissent from the panel decision in *Steelhammer*, an opinion that was ultimately adopted by the Court *en banc*. In that opinion, Judge Winter wrote that, "in the balancing of interests suggested by Mr. Justice Powell in his concurring opinion in *Branzburg v. Hayes*, 408 U.S. 665, 709 (1972), the absence of a claim of confidentiality and the lack of evidence of vindictiveness tip the scale to the conclusion that the district court was correct in requiring the reporters to testify." 539 F. 2d at 376. Taken together, *Shain* and *Steelhammer* not only reflect this Court's embrace of a reporters' privilege protecting confidential sources in the context of a criminal prosecution (*Shain*), they reveal that recognition of such a privilege in this Circuit has heretofore been based squarely on the construction of Justice Powell's concurring opinion in *Branzburg* that the panel majority now purports to reject (*Steelhammer*). See *Sterling*, 2013 WL 3770692, at \*7 ("We cannot accept this strained reading of Justice Powell's opinion.")<sup>1</sup>

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<sup>1</sup> See also, e.g., *Ashcraft*, 218 F.3d at 287 (citing Justice Powell's opinion for proposition that "reporter's claim of privilege should be judged on a case-by-case basis"); *LaRouche*, 780 F.2d at 1139 (citing Justice Powell's opinion in holding that, "[i]n determining whether the journalist's privilege will protect the source in a given situation, it is necessary for the district court to balance the interests involved"); *Sterling*, 2013 WL 3770692, at \*36 (Gregory, J., dissenting) ("The Fourth Circuit, like our sister circuits, has applied Justice Powell's balancing test in analyzing whether to apply a reporter's privilege to quash subpoenas seeking confidential source information from reporters."). Indeed, in later cases, Justice Powell left no doubt that his concurring opinion in *Branzburg* means what it plainly says – that fundamental principles undergirding the First Amendment

**Second**, the panel majority’s conclusion is inconsistent with the decisions of every other federal appellate court to consider the reporters’ privilege in the context of a contested criminal proceeding. Simply put, *every* federal circuit to address the question has recognized such a privilege and, until now, no circuit has suggested otherwise. Those courts have uniformly applied a qualified reporters’ privilege, grounded in the First Amendment and/or federal common law, that protects journalists from the compelled disclosure of their confidential sources in the context of contested criminal proceedings.

In all, eight of the eleven other federal circuits have considered whether there is a qualified privilege available to journalists in the context of an adversarial criminal proceeding such as the criminal prosecution at issue here. Four of them (the Second, Ninth, Eleventh and District of Columbia Circuits) have determined that the privilege protects the kind of confidential source information at issue in this case. Two others (the First and Third) have extended the protection afforded in the context of a criminal prosecution beyond the identities of confidential sources to include non-confidential, albeit unpublished journalistic work product as

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obligate courts to balance the freedom of the press against the interest in compelled disclosure on the facts of each case. *See Saxbe v. Wash. Post Co.*, 417 U.S. 843, 859-60 (1974) (Powell, J., dissenting); *Zurcher v. Stanford Daily*, 436 U.S. 547, 570 n.3 (1978) (Powell, J., concurring) (as he noted in *Branzburg*, “in considering a motion to quash a subpoena directed to a newsman, the court should balance the competing values of a free press and the societal interest in detecting and prosecuting crime”).

well. The two remaining circuits (the Fifth and Seventh) have declined to recognize a privilege protecting *non-confidential* information in the context of contested criminal proceedings, but have both expressly recognized that very different considerations would govern the resolution of the distinct issue before this Court – *i.e.*, protection against the compelled disclosure of the identities of confidential sources.

This body of precedent is neither ambiguous, equivocal nor outdated. As recently as February 14, 2013, the Eleventh Circuit reiterated that “[o]ur Circuit recognizes a qualified privilege for journalists, allowing them to resist compelled disclosure of their professional newsgathering efforts. This privilege shields reporters in both criminal and civil proceedings.” *United States v. Capers*, 708 F.3d 1286, 1303 (11th Cir. 2013) (quashing subpoena to reporter to testify in criminal prosecution). Similarly, in *United States v. Cuthbertson*, 630 F.2d 139, 147 (3d Cir. 1980), the Third Circuit held that “journalists possess a qualified privilege not to divulge confidential sources” and that the privilege fully applies “in criminal cases.” Recognizing the same overarching interests supporting “the unfettered communication to the public of information and opinion” articulated by this Court in *Ashcraft*, the Third Circuit grounded the qualified privilege in federal common law. *Id.* at 146. Regardless of its source, however, the court emphasized that the privilege is presumptively available in *all* cases outside the grand jury

context, both criminal and civil. *See id.* at 147. *See also Farr v. Pitchess*, 522 F.2d 464, 467-69 (9th Cir. 1975) (rejecting argument that *Branzburg* foreclosed recognition of reporters' privilege in the context of a criminal prosecution).

The Second Circuit has also recognized a qualified privilege in criminal cases. *See United States v. Burke*, 700 F.2d 70, 76-77 (2d Cir. 1983). Indeed, in 2011, that circuit reaffirmed that, when a party in a criminal case seeks to compel the disclosure of confidential sources, a journalist is "entitled to invoke the stronger privilege that protects confidential materials." *United States v. Treacy*, 639 F.3d 32, 42 (2d Cir. 2011). The D.C. Circuit has reached the same conclusion. *See United States v. Ahn*, 231 F.3d 26, 37 (D.C. Cir. 2000).<sup>2</sup>

For its part, the First Circuit has held that the law protects journalists from the compelled disclosure of even non-confidential information in criminal proceedings. *See United States v. LaRouche Campaign*, 841 F.2d 1176 (1st Cir. 1988) (weighing television network's First Amendment interest in non-disclosure of non-confidential information against defendants' fair trial rights). Although the First Circuit has not had an opportunity to address the scope of that protection in the face of an attempt to compel disclosure by a reporter of the identity of a

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<sup>2</sup> Although one district court sitting in the D.C. Circuit has asserted that the court of appeals did not embrace the privilege in *Ahn*, *see United States v. Libby*, 432 F. Supp. 2d 26, 45 (D.D.C. 2006), that contention cannot reasonably be squared with the language of the court's opinion in *Ahn* itself.



confidential source in a criminal prosecution, there can be no serious contention that the *broader* holding in *LaRouche Campaign* would yield a different result in that context. Finally, while the Fifth and Seventh Circuits have declined to recognize a qualified privilege in criminal cases that extends to non-confidential journalistic work product, both courts have signaled that the outcome would likely be different if the information sought by the subpoena was confidential. *See McKevitt v. Pallasch*, 339 F.3d 530, 531-33 (7th Cir. 2003) (refusing to quash subpoena where the source “wants the information disclosed” and indicating analysis would be different “[w]hen the information in the reporter’s possession” comes “from a confidential source”); *United States v. Smith*, 135 F.3d 963, 972 (5th Cir. 1998) (refusing to quash subpoena seeking nonconfidential information because “the existence of a confidential relationship that the law should foster is critical to the establishment of a privilege.”).

The lion’s share of these decisions, like this Court’s *en banc* determination in *Steelhammer* (and Judge Gregory’s dissenting opinion in this case), are grounded in precisely the same construction of Justice Powell’s concurring opinion in *Branzburg* that the panel majority has now purported to reject. *See, e.g., United States v. Criden*, 633 F.2d 346, 357 (3d Cir. 1980) (adopting “the formulation in the concurring opinion of Justice Powell in *Branzburg*”); *Burke*, 680 F.2d at 8 n. 9 (“Justice Powell cast the deciding vote in *Branzburg v. Hayes*, and therefore his

reservations are particularly important in understanding the decision.”) (citation omitted). If nothing else, the uniformity of these decisions, and their reasoning, highlights the significance of the panel majority’s departure from prior law. The panel cites no case in which a federal appellate court has purported to conclude that there is no reporter’s privilege available in the context of a criminal prosecution. Indeed, until now, there has been no such case.

**Third**, the panel majority both misstates and misapprehends the scope and significance of the Supreme Court’s holding in *Branzburg*. Throughout its analysis, the panel majority states that the Court in *Branzburg* refused to recognize a reporters’ privilege protecting against the compelled disclosure of the identities of confidential sources in any criminal proceeding, including in the context of a criminal prosecution. *See Sterling*, 2013 WL 3770692, at \*5-7. In fact, however, *Branzburg* addressed only claims of reporters’ privilege asserted in the context of subpoenas issued by a grand jury and, fairly read, does not purport to speak to the viability of such a privilege outside the grand jury context.

As the Court in *Branzburg* explicitly stated, “[t]he *sole* issue before us is the obligation of reporters to respond to *grand jury subpoenas* as other citizens do and to answer questions relevant to an investigation into the commission of crime.” 408 U.S. at 682 (emphasis added). In addressing that limited question, the Court focused squarely and specifically on the unique function performed by the grand

jury: “Fair and effective law enforcement aimed at providing security for the person and property of the individual is a fundamental function of government, and the grand jury plays an important, constitutionally mandated role in this process.” *Id.* at 690. The grand jury, the Court emphasized, is ““a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime.”” *Id.* at 688 (citation omitted); *see also id.* (asserting that “historic” and “longstanding principle that ‘the public . . . has a right to every man's evidence’” is “particularly applicable to grand jury proceedings”) (citation omitted). As the other circuits to address the issue have explained, the Court’s decision hinged on this *sui generis* role of the grand jury in American law and is, at the very least, not dispositive, as the panel majority has now asserted it is, of the distinct question presented in this case – *i.e.*, whether a qualified reporters’ privilege is available in the very different context of a criminal prosecution:

The precise holding of *Branzburg* subordinated the right of the newsmen to keep secret a source of information in face of the more compelling requirement that a grand jury be able to secure factual data relating to its investigation of serious criminal conduct. The application of the *Branzburg* holding to non-grand jury cases seems to require that the claimed First Amendment privilege and the opposing need for disclosure be judicially weighed in light of the surrounding facts and a balance struck to determine where lies the paramount interest.

*Farr*, 522 F.2d at 467-68.

Not surprisingly, therefore, the cases on which the panel majority relies arise in the grand jury context and do not purport to address subpoenas issued to reporters in subsequent, adversarial phases of the criminal justice process. In *In re Judith Miller*, for example, the case on which the panel majority relies most heavily, the D.C. Circuit affirmed the trial court's decision compelling two journalists to identify their confidential sources specifically because the subpoenas requiring them to do so were issued by a grand jury. *See Miller*, 397 F.3d 964, 970 (D.D.C. 2005) (“we have pressed [reporters] for some distinction between the facts before the Supreme Court in *Branzburg* and those before us today. They have offered none, nor have we independently found any.”). The other precedent on which the panel majority purports to rely is similarly circumscribed. *See, e.g., Scarce v. United States (In re Grand Jury Proceedings)*, 5 F.3d 397, 402 (9th Cir. 1993) (distinguishing prior decision in *Farr*, which recognized privilege in criminal prosecution, “because that case – unlike *Branzburg* or the present case – did not involve testimony before a grand jury”); *New York Times Co. v. Gonzales*, 459 F.3d 160, 172-73 (2d Cir. 2006) (rejecting assertion of privilege in grand jury context, but declining to revisit earlier Second Circuit cases recognizing privilege because “[n]one involved a grand jury subpoena”); *In re Special Proceedings*, 373 F.3d 37, 47 (1st Cir. 2004) (holding privilege unavailable in context of

investigation by special prosecutor because “[w]hat the special prosecutor is currently doing is sufficiently like what a grand jury would do”). *See* pp. 6-7 *supra* (citing cases recognizing privilege in criminal proceedings outside grand jury context).

**Fourth**, the panel majority’s decision marks the first and, to date, only occasion on which a federal appellate court has purported to conclude there is no common law reporters’ privilege protecting confidential sources. In reaching its decision, the panel majority asserted that, in *Branzburg*, the Supreme Court had rejected the existence of such a privilege at common law and that, despite both the subsequent passage of Federal Rule of Evidence 501 and the Supreme Court’s decision in *Jaffee v. Redmond*, 518 U.S. 1 (1996), it was precluded from revisiting what it characterized as the Supreme Court’s “decision” in this regard in *Branzburg*. *See Sterling*, 2013 WL 3770692, at \*13.

There are multiple flaws in the panel majority’s reasoning. For one thing, *Branzburg* itself contains no holding directed at a common law privilege. The issue was simply not before the Court and Justice White’s passing observation that there had historically been no reporters’ privilege at common law is just that, an observation of historical fact. *See Branzburg*, 408 U.S. at 685 (“At common law, courts consistently refused to recognize the existence of any privilege authorizing a newsman to refuse to reveal confidential information to a grand jury.”).

For another, as the Third Circuit and several other distinguished federal appellate judges have recognized, that pre-1972 historical experience is largely beside the point – the very purpose of Rule 501 is to provide the federal courts with the flexibility to recognize *new* common law privileges, beyond those previously available, in appropriate circumstances. *See Riley v. City of Chester*, 612 F.2d 708, 713-15 (3d Cir. 1979) (holding that “[t]he legislative history of Rule 501 manifests that its flexible language was designed to encompass, inter alia, a reporter’s privilege not to disclose a source”); *Steelhammer*, 539 F.2d at 377 (Winter, J., dissenting), *adopted en banc*, 561 F.2d at 540 (advocating recognition of common law privilege pursuant to Rule 501).<sup>3</sup> As the Supreme Court explicitly recognized in *Jaffee*, Rule 501 “did not freeze the law governing the privileges of witnesses in federal trials at a particular point in our history, but rather directed federal courts to ‘continue the evolutionary development of testimonial privileges.’” 518 U.S. at 8-9 (citation omitted). Simply put, the panel majority’s

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<sup>3</sup> *See also McKevitt*, 339 F.3d at 532 (Posner, J.) (emphasizing the “important point” that the “Constitution is not the only source of evidentiary privileges” and applauding those courts that had endeavored to “cut the reporter’s privilege free from the First Amendment” and to recognize instead a “federal common law privilege for journalists”); *Gonzales*, 459 F.3d at 181 (Sack, J., dissenting) (“A qualified journalists’ privilege seems to me easily – even obviously – to meet each of [the *Jaffee*] qualifications.”); *Miller*, 438 F.3d at 1170 (Tatel, J., concurring) (advocating recognition of common law privilege even in grand jury context and asserting that “the case for a privilege” is “even stronger than in *Jaffee*”); *id.* at 1160 (Henderson, J., concurring) (federal court of appeals is “not bound by *Branzburg*’s commentary on the state of the common law in 1972”).

contrary conclusion – *i.e.*, that recognition of a reporters’ privilege at common law is precluded because it was not one of the several other privileges enumerated in an earlier version of the rule that Congress declined to adopt, *see Sterling*, 2013 WL 3770692, at \*13 – cannot reasonably be reconciled with either the Supreme Court’s decision in *Jaffee* or with the developments in applicable law in the four decades since *Branzburg*.

During that period, an overwhelming number of states (in all, 39 plus the District of Columbia) have enacted a reporters’ privilege by statute and all but one have recognized and applied it in their courts, including every state within this Circuit. *See Sterling*, 2013 WL 3770692, at \*44 (Gregory, J., dissenting). At the federal level, despite its position in this case, the Department of Justice has recently reacted to the broad public outcry that greeted the revelation that it had issued subpoenas to third parties seeking information about journalists’ sources by taking concrete steps to enhance its own commitment to our shared national view of the “essential role of a free press in fostering government accountability and an open society.” Department of Justice Report on Review of News Media Policies, July 12, 2013. As Judge Sack has explained, in a passage that ought to be dispositive of the inquiry with respect to judicial recognition of a common law reporters’ privilege under Rule 501, there can be no dispute that, in 2013, such a privilege “exists. It is palpable; it is ubiquitous; it is widely relied upon; it is an

integral part of the way in which the American public is kept informed and therefore of the American democratic process.” *Gonzales*, 459 F.3d at 181.

**CONCLUSION**

“[T]he freedom of the press is one of the our Constitution’s most important and salutary contributions to human history.” *Sterling*, 2013 WL 3770692, at \*33 (Gregory, J., dissenting). Because the decision rendered by the panel majority is insufficiently protective of that fundamental freedom and contrary to prior rulings, this Court should grant the petition for rehearing *en banc* and reconsider this case.

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## CERTIFICATE OF COMPLIANCE

I hereby certify that:

- (1) this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,902 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and
- (2) this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) because it was prepared in a proportionally spaced, 14-point typeface (Times New Roman) using Microsoft Word 2010.

/s/ Lee Levine  
Lee Levine

## ADDENDUM

### DESCRIPTION OF AMICI

**ABC, Inc.:** ABC, Inc. is a broad-based communications company with significant holdings in the United States and abroad. Alone or through its subsidiaries, it owns ABC News, abcnews.com, and local broadcast television stations that regularly gather and report news to the public. ABC News produces the television programs *World News with Diane Sawyer*, *Good Morning America*, *Nightline*, *20/20*, and *This Week*, among others.

**Advance Publications, Inc.:** Advance Publications, Inc., directly and through its subsidiaries, publishes over 20 magazines with nationwide circulation, 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.

**The Associated Press:** The Associated Press is a mutual news cooperative organized under the Not-for-Profit Corporation Law of New York. AP gathers and distributes news of local, national and international importance to its member newspapers and broadcast stations and to thousands of other customers in all media formats across the United States and throughout the world.

**Bloomberg LP d/b/a Bloomberg News:** Bloomberg News is one of the world's largest newsgathering organizations, comprised of more than 2,500

journalists around the world in more than 120 bureaus. Bloomberg provides business, legal and financial news through the Bloomberg Professional Service, Bloomberg's website and Bloomberg Television.

**Cable News Network LP, LLLP:** Cable News Network LP, LLLP ("CNN") is a subsidiary of Turner Broadcasting System, Inc., a Time Warner company. CNN is one of the world's largest news organizations with over a dozen television and radio news networks and websites available worldwide, as well as several news programming services, which are provided to affiliates domestically and worldwide. CNN employs more than 3,000 news professionals, who gather news throughout the world.

**CBS Corporation:** CBS Corporation is a mass media company with operations in virtually every field of media and entertainment, including but not limited to broadcast television (CBS and The CW – a joint venture between CBS Corporation and Warner Bros. Entertainment), cable television (Showtime Networks, Smithsonian Networks and CBS Sports Network), local television (CBS Television Stations), radio (CBS Radio) and publishing (Simon & Schuster).

**Cox Media Group, Inc.:** Cox Media Group, Inc. is an integrated broadcasting, publishing, direct marketing and digital media company. Its operations include 15 broadcast television stations, a local cable channel, a leading

direct marketing company, 85 radio stations, eight daily newspapers and more than a dozen non-daily print publications, and more than 100 digital services.

**Daily News, L.P.:** Daily News, L.P. publishes the New York *Daily News*, a daily newspaper that is the fifth-largest paper in the country by circulation. The Daily News' web site, nydailynews.com, receives approximately 31 million unique visitors each month.

**Dow Jones & Company, Inc.:** Dow Jones & Company, Inc. a global provider of news and business information, is the publisher of *The Wall Street Journal*, *Barron's*, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with 2,000 journalists in more than fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corp company..

**The E.W. Scripps Company:** The E.W. Scripps Company (www.scripps.com) is a diverse, 132-year-old media enterprise with interests in newspaper publishing, online publishing, local broadcast television stations, and licensing and syndication. The company's portfolio of locally focused media properties includes: daily and community newspapers in 15 markets; 10 broadcast TV stations, with six ABC-affiliated stations, three NBC affiliates and one

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

**First Amendment Coalition:** The First Amendment Coalition is a non-profit public interest organization dedicated to advancing free speech and open-government rights. A membership organization, the Coalition's activities include educational and informational programs, strategic litigation to enhance First Amendment and access rights for the largest number of citizens, legal information and consultation services, and legislative oversight of bills affecting free speech. The Coalition's members are newspapers and other news organizations, bloggers, libraries, civic organizations, academics, freelance journalists, community activists and ordinary individuals seeking help in asserting rights of citizenship. The Coalition's offices are in San Rafael, California.

**Fox News Network, L.L.C.:** Fox News Network, L.L.C. owns and operates the national cable news network, the Fox News Channel, which reaches approximately 98 million subscribers in the United States. It also owns and operates the Fox Business Network, the Fox News Edge, the Sunday morning political talk program Fox News Sunday, the websites FoxNews.com and FoxBusiness.com, and the national Fox News Radio Network.

**Gannett Co., Inc.:** 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. Gannett also owns 23 television stations. Each of Gannett's daily newspapers and TV stations operate Internet sites offering news and advertising that is customized for the market served and integrated with its publishing or broadcasting operations.

**The Hearst Corporation:** Hearst Corporation is one of the nation's largest diversified media companies. Its major interests include the following: ownership of 15 daily and more than 30 weekly newspapers, including the *Houston Chronicle*, *San Francisco Chronicle* and *Albany Times Union*; nearly 300 magazines around the world, including *Good Housekeeping*, *Cosmopolitan* and *O, The Oprah Magazine*; 29 television stations, which reach a combined 18% of U.S. viewers; ownership in leading cable networks, including Lifetime, A&E and ESPN; business publishing, including a joint venture interest in Fitch Ratings; and Internet businesses, television production, newspaper features distribution and real estate.

**National Association of Broadcasters:** The National Association of Broadcasters ("NAB"), organized in 1922, is a non-profit incorporated association of radio and television broadcast stations and networks. NAB membership includes more than 6300 radio stations, 1300 television stations, and the major commercial broadcast networks.

**National Public Radio, Inc.:** National Public Radio, Inc. (“NPR”) is a District of Columbia non-profit membership corporation. It produces and distributes its radio programming through, and provides trade association services to, nearly 800 public radio member stations located throughout the United States and in many U.S. territories. NPR’s award-winning programs include Morning Edition, All Things Considered, and Talk of the Nation and serve a growing broadcast audience of over 23 million Americans weekly. NPR also distributes its broadcast programming online (adding additional reporting and features), to foreign countries through satellite and cable systems worldwide, and to U.S. Military installations via the American Forces Radio and Television Service.

**NBCUniversal Media, LLC:** NBCUniversal Media, LLC is one of the world’s leading media and entertainment companies. NBCUniversal owns and operates the NBC television network, a Spanish-language network (Telemundo), NBC News, NBC Sports, and several news and entertainment networks including MSNBC and CNBC. NBC News produces the Today show, NBC Nightly News, Rock Center with Brian Williams, Dateline and Meet the Press. NBCUniversal also owns and operates 25 television stations.

**The New York Times Company:** The New York Times Company is the owner of *The New York Times*, *The Boston Globe*, and *The International Herald Tribune*.

**Newspaper Association of America:** The 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 strategic priorities is to advance newspapers’ First Amendment interests, including the ability to gather and report the news.

**The Newsweek/Daily Beast Company LLC:** The Newsweek/Daily Beast Company LLC operates the website thedailybeast.com and publishes Newsweek magazine. Thedailybeast.com attracts over 10 million unique online visitors a month and Newsweek reaches millions of readers across America and through its international editions.

**Radio Television Digital News Association:** The Radio Television Digital News Association (“RTDNA”), is based in Washington, D.C., and is the world’s largest professional organization devoted exclusively to electronic journalism. RTDNA represents local and network news directors and executives, news associates, educators and students in broadcasting, cable and other electronic media in over 30 countries. RTDNA is committed to encouraging excellence in electronic journalism and upholding First Amendment freedoms.



**Reporters Committee For Freedom of the Press:** The Reporters

Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend First Amendment rights and freedom of information interests of the news media. The Reporters Committee provides representation, guidance, and research in First Amendment litigation. The Reporters Committee was founded in 1970 in response to a wave of government subpoenas directed at journalists.

**Reuters America LLC:** Reuters, the world's largest international news agency, is a leading provider of real-time multi-media news and information services to newspapers, television and cable networks, radio stations and websites around the world. Through Reuters.com, affiliated websites and multiple online and mobile platforms, more than a billion professionals, news organizations and consumers rely on Reuters every day. Its text newswires provide newsrooms with source material and ready-to-publish news stories in twenty languages and, through Reuters Pictures and Video, global video content and up to 1,600 photographs a day covering international news, sports, entertainment, and business. In addition, Reuters publishes authoritative and unbiased market data and intelligence to business and finance consumers, including investment banking and private equity professionals.

**Time Inc.:** Time Inc. is the largest magazine publisher in the United States. It publishes over 90 titles, including Time, Fortune, Sports Illustrated, People, Entertainment Weekly, InStyle and Real Simple. Time Inc. publications reach over 100 million adults and its Web sites serve close to 2 billion page views each month. Time Inc. also owns IPC Group Limited, the UK's top magazine publisher.

**Tribune Company:** Tribune is one of the country's leading multimedia companies, operating businesses in publishing, digital and broadcasting. In publishing, Tribune's leading daily newspapers include the Los Angeles Times, Chicago Tribune, The Baltimore Sun, Sun Sentinel (South Florida), Orlando Sentinel, Hartford Courant, The Morning Call and Daily Press. The company's broadcasting group operates 23 television stations, WGN America on national cable and Chicago's WGN-AM. Popular news and information websites complement Tribune's print and broadcast properties and extend the company's nationwide audience.

**The Washington Post:** The Washington Post publishes one of the nation's most prominent daily newspapers, as well as a website ([www.washingtonpost.com](http://www.washingtonpost.com)) that attracts an average of more than 17 million unique visitors per month.

**WNET:** WNET is the premier public media provider of the New York City metropolitan area and parent company of public television stations THIRTEEN

and WLIW21. WNET also hosts the digital services THIRTEEN HD, KidsTHIRTEEN, WLIW Create, WLIW World, THIRTEEN on Demand, THIRTEEN Kids on Demand, and V-me; as well as an ever-expanding range of websites, including [thirteen.org](http://thirteen.org), [wliw21.org](http://wliw21.org), and Thirteen EdOnline. The WNET family of companies is a major producer of broadcast and online media for local, national and international audiences, creating award-winning content in the areas of arts and culture, news and public affairs, science and natural history, documentaries, and children's programming.

## CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2013, I filed the foregoing Brief of Amici Curiae with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to the following registered users:

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