

No. 22-55872

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

DR. MAHENDRA AMIN, M.D.,

Plaintiff-Appellee,

v.

DON WINSLOW,

Defendant-Appellant.

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On Appeal from the U.S. District Court for the  
Southern District of California  
Case No. 21-CV-1635L BGS (Hon. M. James. Lorenz)

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**BRIEF OF AMICI CURIAE REPORTERS COMMITTEE FOR FREEDOM  
OF THE PRESS AND 32 MEDIA ORGANIZATIONS  
IN SUPPORT OF DEFENDANT-APPELLANT**

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## **STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE**

Amici are the Reporters Committee for Freedom of the Press; The Associated Press; The Atlantic Monthly Group LLC; California Broadcasters Association; California News Publishers Association; Californians Aware; CalMatters; The Center for Investigative Reporting (d/b/a Reveal); Courthouse News Service; Dow Jones & Company, Inc.; The E.W. Scripps Company; Embarcadero Media; First Amendment Coalition; Freedom of the Press Foundation; Gannett Co., Inc.; Institute for Nonprofit News; International Documentary Association; KQED, Inc.; Los Angeles Press Club; The McClatchy Company, LLC; Media Guild of the West, The NewsGuild-CWA Local 39213; The Media Institute; MediaNews Group Inc.; National Press Photographers Association; The New York Times Company; News/Media Alliance; Pacific Media Workers Guild (The NewsGuild-CWA Local 39521); The Philadelphia Inquirer; Sinclair Broadcast Group, Inc.; Society of Environmental Journalists; Society of Professional Journalists; Student Press Law Center; and The Washington Post. A supplemental statement of identity and interest of amici curiae is included below as Appendix A.

As members of the news media and organizations that defend the First Amendment and newsgathering rights of journalists and the press, amici have a strong interest in ensuring that the principles underlying the U.S. Supreme Court's

decision in *New York Times v. Sullivan*, 376 U.S. 254 (1964), as well as those reflected in C.C.P. § 425.16, are upheld, and that individuals who criticize the actions of public officials are not exposed to defamation liability absent a sufficient showing of actual malice. Amici write to address an issue of particular significance to the news media—specifically, the importance of such protections to the news media’s ability to report on matters of public concern involving government actors like Plaintiff-Appellee. These protections reflect our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *Sullivan*, 376 U.S. at 270. Fostering such debate is essential to a healthy and thriving democracy capable of holding government actors to account.

**SOURCE OF AUTHORITY TO FILE**

Amici have obtained consent to file this brief from both parties and therefore may file it pursuant to Federal Rule of Appellate Procedure 29(a)(2).

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

Amici declare that:

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

## INTRODUCTION

Free and open debate is the cornerstone of democracy. To safeguard uninhibited public discussion—including caustic criticism—about the actions of government, the First Amendment requires public officials to demonstrate that defamatory statements relating to their official conduct were made with actual malice. *Sullivan*, 376 U.S. at 271–72; *id.* at 279–80.

Plaintiff-Appellee Dr. Mahendra Amin (“Dr. Amin”), filed this lawsuit in response to a Tweet posted by Defendant-Appellant Don Winslow, a *New York Times* bestselling author. 1-ER-3. The Tweet concerned allegations made against Dr. Amin in connection with gynecological services he provided to female detainees at the Irwin County Detention Center (“ICDC”) who were in the custody of U.S. Immigration and Customs Enforcement (“ICE”). 1-ER-2. In 2020, a whistleblower lodged a complaint with the Department of Homeland Security, ICE, and ICDC claiming that high rates of surgeries and other invasive medical procedures were being performed unnecessarily and non-consensually at ICDC. *Id.*; 3-ER-342 ¶ 46. In the subsequent months, government investigations were launched into medical practices at ICDC, and a civil class action lawsuit was filed against Dr. Amin, among other defendants, asserting claims of battery and medical malpractice. Appellant’s Opening Br. at 12. About one year after the original whistleblower complaint, Dr. Amin filed the instant lawsuit against Winslow in the

U.S. District Court for the Southern District of California (the “District Court”). 3-ER-339 ¶ 9. Winslow moved to dismiss the action pursuant to C.C.P. § 425.16, California’s anti-SLAPP law, which makes all claims arising from activity in furtherance of one’s free speech rights in connection with a public issue subject to a special motion to strike. 1-ER-3.

The District Court correctly held that Dr. Amin’s lawsuit arose from an act in furtherance of Winslow’s free speech rights. 1-ER-5. However, in denying Winslow’s anti-SLAPP motion, the District Court incorrectly concluded that Dr. Amin was not a public official, finding that, as a government contractor whose work was subject to review by a government agency, he lacked “substantial responsibility for or control over the conduct of governmental affairs.” *Id.* 1-ER-6 (citation and internal quotation marks omitted).<sup>1</sup>

As the Supreme Court has held, “[w]here a position in government has such apparent importance that the public has an independent interest in the

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<sup>1</sup> The District Court also noted that there was no evidence in the pleadings to “suggest” that Dr. Amin had “significantly greater access to the channels of effective communication . . . than private individuals normally enjoy.” 1-ER-6 (citation and internal quotation marks omitted). However, as Winslow explains, “neither the U.S. Supreme Court nor this Court have held that a plaintiff must have had ‘greater access to the channels of effective communication’ to be deemed a ‘public official.’” *See* Appellant’s Opening Br. at 63–64; *see also Rattray v. City of Nat’l City*, 51 F.3d 793, 800 (9th Cir. 1994) (finding a rank-and-file police officer to be a public official).

qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees,” that individual is subject to the *Sullivan* actual malice standard applicable to public officials. *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966). As an OB/GYN responsible for intimate—and, in some cases, life altering—medical decisions for detainees in the government’s custody who have no access to alternative doctors or medical opinions, Dr. Amin’s “position” is of an “apparent importance to the public . . . beyond the general public interest in . . . all government employees.” *Id.* Contrary to the District Court’s finding that Dr. Amin lacked “substantial responsibility for or control over the conduct of governmental affairs,” 1-ER-6, the very nature of Dr. Amin’s role required him to exercise significant discretion in conducting medical evaluations and recommending treatment plans. Furthermore, as a matter of policy, holding that Dr. Amin is not a public official when he is carrying out government activity of significant public interest would effectively enable the government to circumvent *Sullivan* and contract away its accountability to the public. This would threaten the vitality of our public discourse by depriving speech about government actors of one of its most important protections. Amici therefore respectfully urge this Court to reverse the District Court’s holding as to Dr. Amin’s status as a plaintiff and find him to be a public official.

## ARGUMENT

**I. Dr. Amin, an OB/GYN who, working on behalf of the government, provided gynecological services to detainees in government custody, is a public official for purposes of defamation law.**

In *Sullivan*, the Supreme Court carefully balanced the reputational interests underlying the tort of defamation with the need to shield members of the press and public from the chilling threat of defamation litigation arising out of reporting and other speech about public affairs. Recognizing the enormous and indeed irreplaceable role of free speech in maintaining a democratic society—and, in particular, speech critical of government and public officials—the Court held that public officials could seek damages for defamatory statements against them only if they were made with actual malice, *i.e.*, with knowledge of their falsity or with reckless disregard for their falsity. *Sullivan*, 376 U.S. at 279–80. Its decision recognized that “debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *Id.* at 270. Indeed, as Justice Brennan expressly noted in his majority opinion for the Court, “a national awareness of the central meaning of the First Amendment” in 1789 included “the people’s distrust of concentrated power, *and of power itself at all levels.*” *Id.* at 274 (emphasis added); *see also* Matthew L. Schafer, *In Defense: New York Times v. Sullivan*, 82 La. L. Rev. 81, 130–31 (2021) (noting historical cases holding that

“those contracting to provide services to the government . . . were required to carry a heavier burden as defamation plaintiffs than private figures” at common law). In keeping with these principles, the actual malice standard protects the public, including journalists and the news media, from the risk of massive damages awards in defamation cases for speech or reporting on matters of public interest and concern involving public officials.

Although the Supreme Court has declined to “specify categories of persons who would or would not be” considered public officials, *Sullivan*, 376 U.S. at 283, n. 23, its decision in *Rosenblatt* is instructive. In evaluating whether the supervisor of a county recreation area was a public official, the Court cited two primary interests underlying the *Sullivan* decision: “first, a strong interest in debate on public issues, and, second, a strong interest in debate about those persons who are in a position significantly to influence the resolution of those issues.” *Rosenblatt*, 383 U.S. at 85. Recognizing that “criticism of those responsible for government operations must be free, lest criticism of government itself be penalized” the Court concluded that the public official designation should apply “at the very least to those . . . who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.” *Id.*; see also *Arnheiter v. Random House, Inc.*, 578 F.2d 804, 805 (9th Cir. 1978) (quoting *Rosenblatt* in finding that a U.S. Navy officer was a public official). Indeed, “[w]here a position

in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees,” *Sullivan*’s actual malice standard must apply. *Rosenblatt*, 383 U.S. at 86.

Here, Dr. Amin was hired as an OB/GYN to provide gynecological services to detainees in ICE custody on behalf of the government. The services he provided included, *inter alia*, conducting medical evaluations, making recommendations, and performing procedures. According to a U.S. Senate Subcommittee investigation, surgeries and procedures recommended by Dr. Amin were “excessive, invasive, and often unnecessary.” Staff of S. Comm. on Homeland Sec. and Gov. Affairs, Perm. Subcomm. on Investigations, 117th Cong., Medical Mistreatment of Women in ICE Detention (Nov. 15, 2022) (hereinafter the “Senate Report”), 3, 17, <https://perma.cc/KD23-G2TC>. There is a patently strong public interest in ensuring open discussion of the job performance of a medical professional hired by the government to provide medical care to detainees in government custody who have no access to alternative medical care of their own choosing. Thus, contrary to the District Court’s holding, 1-ER-5–6, Dr. Amin’s position had “such apparent importance that the public has an independent interest” in his qualifications and performance “beyond the general public interest in the

qualifications and performance of all government employees,” thus rendering him a public official for purposes of this defamation lawsuit. *Rosenblatt*, 383 U.S. at 86.

Nor, as the District Court incorrectly concluded, did Dr. Amin lack “substantial responsibility for or control over the conduct of governmental affairs.” 1-ER-5–6. Inherent to the role of a doctor is making subjective evaluations of patients based on one’s knowledge and experience. Although Dr. Amin alleges that the surgeries and other procedures he recommended were subject to review and approval by ICE officials, 3-ER-344 ¶¶ 59–63, Dr. Amin presented no evidence to indicate that ICE officials were themselves evaluating each patient and determining, independent of Dr. Amin, whether those patients required surgeries or other medical care. To the contrary, the allegations in Amin’s Complaint state only that ICE reviewed his recommendations for surgical procedures. *Id.*

Moreover, according to the Senate Report, prior to the publication of the whistleblower complaint in September 2020, government officials “never sought to determine whether any of the OB-GYN procedures Dr. Amin performed were medically necessary beyond the initial approval process.” Senate Report at 83–84. Nor did a government Field Medical Coordinator conduct a site visit at any time between January 2018 and October 2020 to evaluate the medical treatment that Dr. Amin was providing to detainees. *Id.* at 80, 89; *see also* 77 (finding that ICE

“engaged in limited efforts to . . . monitor or review the treatment [Dr. Amin] provided, ensure he obtained informed consent or used language translation services . . .”). Simply put, Dr. Amin wielded significant autonomy and discretionary power to carry out medical procedures on the federal government’s behalf. The District Court’s conclusory finding that Dr. Amin “lacked substantial responsibility for or control over the conduct of governmental affairs,” 1-ER-5, is contrary to both Supreme Court precedent and the record in this case and should be reversed.

Indeed, reversing the District Court and finding Dr. Amin to be a public official would be in harmony with a number of cases in which California state courts and federal appellate courts have applied the actual malice standard to individuals who, acting on the government’s behalf, have exerted influence over matters of public controversy. That Dr. Amin was a government contractor as opposed an employee of the federal government does not alter the analysis. California appeals courts interpreting *Rosenblatt* have expressly held that status as a permanent government employee is not a dispositive factor in determining whether someone is a public official when “the plaintiff in all other respects serves as a public official.” *Young v. CBS Broadcasting, Inc.*, 212 Cal. App. 4th 551, 560 (2012). Rather, “the touchstone for public official status is the extent to which the plaintiff’s position is likely to attract or warrant scrutiny by members of the

public.” *Kahn v. Bower*, 232 Cal. App. 3d 1599, 1611 (1991). This scrutiny “may follow either because of the prominence of the position in the official hierarchy, or because the duties of the position tend naturally to have a relatively large or dramatic impact on members of the public.” *Id.* (emphasis added).

In *Kahn*, for example, the California Court of Appeal held that the plaintiff child welfare worker, although not found to have “any significant control over governmental *policy*,” nevertheless “possessed considerable power over the lives affected by her work” and was thus subject to the type of public scrutiny that makes one a public official for purposes of defamation law. *Id.* Here, like the social worker whose “assessments and decisions directly and often immediately determined whether the educational, social, medical and economic needs of developmentally disabled children in her care would adequately be met,” *id.*, Dr. Amin’s medical assessments and decisions determined whether and how the medical needs of detainees in his care would adequately be met. Thus, the “power exercised by” Dr. Amin and its “public visibility, naturally subject[ed]” him to the type of public scrutiny that would render him a public official for defamation purposes. *Id.*; *see also Ghafur v. Bernstein*, 131 Cal. App. 4th 1230, 1238 (2005) (finding that because “the governance of a public school system is of the utmost importance to a community, and . . . carefully scrutinized by residents,” public school board members and superintendents, “clearly have, or appear to the public

to have, substantial responsibility for or control over the conduct of governmental affairs,” thus making them public officials under *Rosenblatt*).

Indeed, Dr. Amin’s position was especially “likely to attract or warrant scrutiny by members of the public” because of the intimate nature of his medical specialty and the fact that his duties pursuant to that specialty tend naturally to—and allegedly did—have a dramatic impact on the lives of detainees in the government’s custody. According to testimony from ICDC detainees, Dr. Amin performed invasive gynecological procedures, including transvaginal ultrasounds, birth control injections, dilation and curettage, laparoscopic surgery to remove ovarian cysts and fallopian tubes, and hysterectomies, allegedly in some cases without informed consent. *See* Senate Report at 66–69; Molly O’Toole, *19 Women Allege Medical Abuse in Georgia Immigration Detention*, L.A. Times (Oct. 22, 2020), <https://perma.cc/2DSD-7XUL>.

Surgeries and other invasive medical procedures—particularly those that impact an individual’s fertility—performed without informed consent directly and personally impact individual freedoms. *See C.R. v. Eugene Sch. Dist. 4J*, 835 F.3d 1142, 1154 (9th Cir. 2016) (acknowledging an “individual’s fundamental rights to liberty and bodily autonomy”); *see also Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (holding that procreation is a fundamental right and that the recipient of a sterilization procedure is “forever deprived of a basic liberty”). And, as the

Seventh Circuit has recognized, where a government agent’s “decisions . . . directly and personally affect individual freedoms,” the public has an “important and special” interest “in the qualifications and performance of [those] agents” thereby rendering them public officials for purposes of defamation law. *Meiners v. Moriarity*, 563 F.2d 343, 352 (7th Cir. 1977).

**II. Application of the actual malice standard in this case is essential to protect public criticism of powerful individuals and institutions.**

In *Sullivan*, the Supreme Court recognized that the First Amendment does not countenance use of libel law to prevent criticism of the powerful and those in official positions of authority. Indeed, the *Sullivan* lawsuit itself was part of a campaign of libel suits in the 1960s against the press that was aimed at stopping reporting about the Civil Rights Movement and speech that was critical of Jim Crow laws. *Sullivan*, 376 U.S. 254, 294–95 (1964) (Black, J., concurring).

Without the protection afforded by the actual malice standard, news organizations may refrain from reporting about the actions of public officials for fear of exposing themselves to the risk of defamation liability.

Dr. Amin provided medical services to detainees at ICDC. 3-ER-341 ¶ 31. His work for the federal government, which continued until 2020, coincided with the government’s controversial policy of separating migrant children from their families at the border. This policy was the target of immense public criticism, including calls to abolish ICE altogether. *See, e.g.,* Dara Lind, “*Abolish ICE*,”

*explained*, Vox (Jun. 28, 2018), <https://perma.cc/9TRC-GVCX>. Dr. Amin could not have been unaware of the controversy surrounding ICE’s treatment of migrants and detainees, or ignorant of the fact that the medical services he provided to detainees on behalf of the federal government were of public interest.

Indeed, the extensive media coverage that the whistleblower complaint received from news organizations around the country makes clear that the “interests in public discussion [were] particularly strong,” *Rosenblatt*, 383 U.S. at 86, in this instance. *See, e.g.*, Caitlin Dickerson, *Inquiry Ordered Into Claims Immigrants Had Unwanted Gynecology Procedures*, N.Y. Times (Sept. 16, 2020), <https://perma.cc/82XG-ABXF>; Rick Jervis, Alan Gomez & Maria Clark, *Alleged Unwanted Hysterectomies and Other Abuses at ICE Facility Prompts Investigation*, USA TODAY (Sept. 17, 2020), <https://perma.cc/3HAY-2X4P>; Alan Judd & Jeremy Redmon, *ICE Detainees Complained About “Rough” Treatment from Georgia Doctor*, Atlanta Journal-Constitution (Sept. 16, 2020), <https://perma.cc/9RFZ-4A7A>; Nomaan Merchant, *More Migrant Women Say They Didn’t OK Surgery*, Associated Press (Sept. 18, 2020), <https://perma.cc/642L-TDQJ>; Jose Olivares & John Washington, *“He Just Empties You All Out”*: *Whistleblower Reports High Humber of Hysterectomies at ICE Detention Facility*, The Intercept (Sept. 15, 2020), <https://perma.cc/QD9U-HFUD>; Rachel Treisman,

*Whistleblower Alleges “Medical Neglect,” Questionable Hysterectomies of ICE Detainees*, National Public Radio (Sept. 16, 2020), <https://perma.cc/6SWQ-ESNK>.

Here, amici agree with Winslow that Dr. Amin failed to plead facts sufficient to show that Winslow’s Tweet was published with actual malice. *See* Appellant’s Opening Br. at 65–70. Affirming the District Court’s finding that Dr. Amin is not a public official and therefore not subject to the actual malice standard would allow Dr. Amin to evade a key protection afforded speech about the government and government actors by the First Amendment, and would subject Winslow to the type of protracted litigation concerning free speech on matters of public concern that California’s anti-SLAPP law was designed to prevent. *See* C.C.P. § 425.16(a) (noting the “disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances,” in light of the strong “public interest [in encouraging] continued participation in matters of public significance . . . .”). In reporting on the serious allegations made against Dr. Amin—an OB/GYN hired by ICE to provide intimate medical services to detainees in the government’s care—journalists and news organizations informed the public about the alleged conduct of the federal government. Such reporting falls squarely within the scope of *Sullivan*. To hold that Dr. Amin is not a public official threatens to chill future

news reporting on matters of public interest and concern and deprive the public of critical information about government actors.

## CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to reverse the District Court's holding as to Dr. Amin's status as a plaintiff and find him to be a public official.

Dated: January 20, 2023

Respectfully submitted,

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## APPENDIX A

### SUPPLEMENTAL STATEMENTS OF IDENTITY OF AMICI CURIAE

**The Reporters Committee for Freedom of the Press** is an unincorporated nonprofit association. The Reporters Committee was founded by journalists and media lawyers in 1970, when the nation’s press faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

**The Associated Press (“AP”)** is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP’s content can reach more than half of the world’s population.

**The Atlantic Monthly Group LLC** is the publisher of *The Atlantic* and TheAtlantic.com. Founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others, *The Atlantic* continues its 160-year tradition of publishing award-winning journalism that challenges

assumptions and pursues truth, covering national and international affairs, politics and public policy, business, culture, technology and related areas.

**The California Broadcasters Association** (“CBA”) is the trade organization representing the interests of the over 1000 radio and television stations in our state. The CBA advocates on state and federal legislative issues, provides seminars for member education and offers scholarship opportunities to students in the communication majors.

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

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

**CalMatters** is a nonpartisan, nonprofit journalism organization based in Sacramento, California. It covers state policy and politics, helping Californians to better understand how their government works while serving the traditional

journalistic mission of bringing accountability and transparency to the state's Capitol. The work of its veteran journalists is shared, at no cost, with more than 180 media partners throughout the state.

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

**Courthouse News Service** is a California-based legal news service that publishes a daily news website with a focus on politics and law. The news service also publishes daily reports on new civil actions and appellate rulings in both state and federal courts throughout the nation. Subscribers to the daily reports include law firms, universities, corporations, governmental institutions, and a wide range of media including newspapers, television stations and cable news services.

**Dow Jones & Company** is the world's leading provider of news and business information. Through *The Wall Street Journal*, *Barron's*, MarketWatch, Dow Jones Newswires, and its other publications, Dow Jones has produced journalism of unrivaled quality for more than 130 years and today has one of the world's largest newsgathering operations. Dow Jones's professional

information services, including the Factiva news database and Dow Jones Risk & Compliance, ensure that businesses worldwide have the data and facts they need to make intelligent decisions. Dow Jones is a News Corp company.

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

**Embarcadero Media** is a Palo Alto-based 40-year-old independent and locally-owned media company that publishes the Palo Alto Weekly, Pleasanton Weekly, Mountain View Voice and Menlo Park Almanac, as well as associated websites. Its reporters regularly rely on the California Public Records Act to obtain documents from local agencies.

**First Amendment Coalition** ("FAC") is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. FAC advances this

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

**Freedom of the Press Foundation** ("FPF") is a non-profit organization that supports and defends public-interest journalism in the 21st century. FPF works to preserve and strengthen First and Fourth Amendment rights guaranteed to the press through a variety of avenues, including building privacy-preserving technology, promoting the use of digital security tools, and engaging in public and legal advocacy.

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

**The Institute for Nonprofit News** is a nonprofit charitable organization that provides education and business support services to our nonprofit member

organizations and promotes the value and benefit of public service and investigative journalism.

**The International Documentary Association** (“IDA”) is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

**KQED, Inc.** is a nonprofit public benefit corporation organized under the laws of California and engaged in dissemination of news and information since its founding as a public broadcasting station in 1953. At all times relevant to this proceeding, KQED’s core mission has been the pursuit and publication/broadcast of information in the public’s interest. KQED has advanced this purpose not only through its consistent San Francisco Bay Area and statewide news reporting, which relies heavily on the use of the California Public Records Act, but also as a champion of public access to some of the most serious information maintained by government: law enforcement use of deadly force, police misconduct and the broader operations of our state’s criminal justice system.

**The Los Angeles Press Club** is a 501(c)(3) nonprofit with over 1,000 member journalists. Established in the early 1900s and incorporated in 1948, the organization’s mission is to support, promote and defend quality journalism in

Southern California. LAPC serves journalists working in any medium (print, digital, broadcast or otherwise), including freelancers and students.

**The McClatchy Company, LLC** is a publisher of iconic brands such as the *Miami Herald*, *The Kansas City Star*, *The Sacramento Bee*, *The Charlotte Observer*, *The (Raleigh) News & Observer*, and the *Fort Worth Star-Telegram*. McClatchy operates media companies in 30 U.S. markets in 16 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, California.

**Media Guild of the West, The NewsGuild-CWA Local 39213**, was founded in 2019 by newly unionized journalists at the Los Angeles Times. The local now represents hundreds of unionized journalists and media workers in newsrooms throughout Southern California, Arizona and Texas. On July 8, 2020, Media Guild of the West members voted 94% to 6% to support advocacy for open-records access, improvements to the California Public Records Act and other transparency laws, and First Amendment issues that affect the work of journalists and serve the public interests of transparency and accountability.

**The Media Institute** is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications

industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

**MediaNews Group** is a leader in local, multi-platform news and information, distinguished by its award-winning original content and high quality local media. It is one of the largest news organizations in the United States, with print and online publications across the country.

**The National Press Photographers Association** (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

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

**The News/Media Alliance** represents news and media publishers, including nearly 2,000 diverse news and magazine publishers in the United States—from the largest news publishers and international outlets to hyperlocal

news sources, from digital-only and digital-first to print news. Alliance members account for nearly 90% of the daily newspaper's circulation in the United States. Since 2022, the Alliance is also the industry association for magazine media. It represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands, on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The Alliance diligently advocates for news organizations and magazine publishers on issues that affect them today.

**The Pacific Media Workers Guild, Local 39521 of The NewsGuild-Communications Workers of America** represents journalists and other media workers, union staffs and freelancers. It is committed to quality journalism and language services, fair wages and benefits, secure employment, safe workplaces and freedom of information. The News Guild is a sector of the Communications Workers of America. CWA is America's largest communications and media union, representing over 500,000 members in both private and public sectors.

**The Philadelphia Inquirer**, owned by the Lenfest Institute for Journalism, is the largest newspaper in the United States operated as a public-benefit corporation. It publishes The Inquirer as well as the Philadelphia Daily News in print, and online at [www.inquirer.com](http://www.inquirer.com). The Inquirer has won 20 Pulitzer Prizes. Under the non-profit ownership of the Institute, which is dedicated solely

to the mission of preserving local journalism, the Inquirer is dedicated to public service journalism and news innovation.

**Sinclair Broadcast Group, Inc.** is a diversified media company and leading provider of local news and sports. The Company owns, operates and/or provides services to 185 television stations in 86 markets; is a leading local news provider in the country; owns multiple national networks; and has TV stations affiliated with all the major broadcast networks and owns and/or operates 21 RSN brands. Sinclair's content is delivered via multiple-platforms, including over-the-air, multi-channel video program distributors, and digital and streaming platforms.

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

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

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

**WP Company LLC d/b/a The Washington Post** is a media and technology company based in Washington, D.C. It publishes *The Washington Post* newspaper and the website [www.washingtonpost.com](http://www.washingtonpost.com), as well as a wide range of digital products and services.

**CERTIFICATE OF SERVICE**

I, Katie Townsend, do hereby certify that I have filed the foregoing Brief of Amici Curiae electronically with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on January 20, 2023.

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

/s/ *Katie Townsend*  
Katie Townsend  
*Counsel of Record for Amici Curiae*  
REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number(s): 22-55872

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

**This brief contains 5,641 words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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

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

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Signature /s/ Katie Townsend Date January 20, 2023