Record No. 0330-23-4

IN THE COURT OF APPEALS OF VIRGINIA

THE COMMONWEALTH OF VIRGINIA, *et al.*
Appellants.

v.

HEATHER SAWYER,
Appellee,

BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND NINE MEDIA AND TRANSPARENCY ORGANIZATIONS IN SUPPORT OF APPELLEE HEATHER SAWYER

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INTEREST OF AMICI CURIAE

Amici curiae the Reporters Committee for Freedom of the Press (the "Reporters Committee") and nine media and transparency organizations submit this brief in support of Appellee Heather Sawyer. Ms. Sawyer consents to the filing of this brief. Appellants the Commonwealth of Virginia, Governor Glenn Youngkin, in his Official Capacity, and the Office of The Governor (collectively "Appellants"), also consent to the filing of this brief.

The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources.[1] Today it provides pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. Members of the media frequently utilize the Virginia

[1] Amici are the Reporters Committee for Freedom of the Press, Virginia Coalition for Open Government, The Media Institute, The National Freedom of Information Coalition, The National Press Photographers Association, The News Leaders Association, The News/Media Alliance, The Society of Environmental Journalists, Society of Professional Journalists, and Student Press Law Center. Descriptions of additional amici are included herein as Appendix A.

Freedom of Information Act, Va. Code Ann. § 3700, *et seq.* ("VFOIA" or the "Act"), to gather information in order to report on matters of public interest and shed light on the activities of government. Accordingly, amici have an interest in ensuring that VFOIA is interpreted in a manner that is consistent with the plain text and purpose of the General Assembly.

INTRODUCTION

Public access to government records is essential to democracy; it prevents the government from operating in secret and allows the public to oversee the actions of government agencies and officials. *Suffolk City School Board v. Wahlstrom*, 886 S.E.2d 244, 253 (Va. 2023) ("VFOIA guarantees [] 'ready access' and 'free entry' because '[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.'") (quoting Va. Code Ann. § 2.2-3700(B)). In recognition of this principle, the Virginia General Assembly enacted the Virginia Freedom of Information Act, Va. Code Ann. § 2.2-3700, *et seq.* ("VFOIA" or the "Act"), which creates a broad presumption in favor of unimpeded public access to government records. Va. Code Ann. §

2.2-3700(B) ("[a]ll public records . . . shall be presumed open, unless an exemption is properly invoked"); *Cartwright v. Commonwealth Transp. Com'r of Virginia*, 270 Va. 58, 65 (2005) (The General Assembly intended for the provisions of VFOIA "to be 'liberally construed.'"). The Act mandates that an agency attempting to invoke an exception to VFOIA's disclosure requirement bears the burden of demonstrating, by a preponderance of the evidence, that the exemption applies. Va. Code Ann. § 2.2-3713(E).

Appellee Heather Sawyer submitted a series of VFOIA requests to the Virginia Office of the Governor related to an email address (the "Tip Line") implemented as part of the Youngkin administration's efforts to end the use of what it termed "inherently divisive concepts" in state education. Appellants withheld several hundred pages of records, citing Va. Code Ann § 2.2-3705.7(2) (hereinafter, the "Working Papers Exemption"), which exempts from disclosure the "[w]orking papers and correspondence of the Office of the Governor."

On August 8, 2022, Ms. Sawyer filed a Petition in the Circuit Court for the County of Arlington to vindicate her right of access to the records under VFOIA. Appellants filed a Demurrer on October 31, 2022, arguing that the Petition failed to state a claim.

On January 25, 2023, the Circuit Court held a hearing on the Petition and Demurrer. After considering the parties' argument and written submissions, the Circuit Court entered an Order overruling the Demurrer and granting the Petition.

On appeal, Appellants argue that the Circuit Court erred in "order[ing] the Governor's Office to produce the documents [at issue] . . . without any evidentiary basis for finding the exemptions inapplicable." Br. of Appellants at 1. The further argue they are entitled to a "presumption that the government conducts searches [for documents responsive to VFOIA requests] in good faith," and that the Circuit Court therefore erred in overruling their Demurrer. *Id.* at 2.

For the reasons herein, amici urge the Court to affirm the order issued by the Circuit Court. The interpretation of VFOIA advanced by Appellants, if accepted, would contradict the General Assembly's intent as to both the narrow scope of the Working Papers Exemption and VFOIA's requirement that an agency bear the burden to justify its withholding of records. The practical effect of adopting Appellants' interpretation of the Act would be to place broad categories of records out of the reach of requestors, including journalists, to the ultimate detriment of the public.

ARGUMENT

I. The plain text and legislative history of the Act, as well as applicable guidance from the VFOIA Advisory Council, support the trial court's interpretation of the Working Papers Exemption.

The Working Papers Exemption excepts from mandatory disclosure "[w]orking papers and correspondence of" certain executives, including the "Office of the Governor." Va. Code Ann. § 2.2-3705.7(2). This statutory language must be interpreted in view of the General Assembly's mandate that "[a]ny exemption from public access to records . . . shall be narrowly construed and no record shall be withheld . . . unless specifically made exempt pursuant to this chapter or other specific provision of law." Va. Code Ann. § 2.2-3700(B).[2] The Act expressly enumerates those officials encompassed

[2] The Act, and the Working Papers Exemption, specifically, has been through several revisions and recodifications. Prior to 2004, identical statutory language was found at Va. Code Ann. § 2.2-3705.(6); the exemptions in that section were recodified as §§ 2.2-3705.1–3705.8. *See* Acts 2004, c. 690. Prior to 2001, the entire VFOIA was located under a different title of the Virginia Code. Va. Code Ann. §§ 2.1-340 (2000), *et seq*. (VFOIA); *see* Acts 2001, c. 844 (recodifying Title 2.1). Under that title, a previous version of the Working Papers Exemption, codified at section 2.1-342, contained slightly different—and arguably broader—statutory language. Specifically, from at least 1983 until 1999, the Act exempted "[m]emoranda, working papers and correspondence held or requested by . . . the office of the Governor." Va. Code Ann. § 2.1–342(B)(4) (1998); *see* 1998 H.B.

by its definition of Office of the Governor; they include: "the Governor, the Governor's chief of staff, counsel, director of policy, and cabinet secretaries, the Assistant to the Governor for Intergovernmental Affairs," and specific other individuals to whom the Governor has expressly delegated power via written executive order. Va. Code Ann. § 2.2-3705.7(2).

The exemption was designed to shield from disclosure records of these specified executives within the Office of the Governor that are personal (*i.e.*, closely held) and deliberative (*i.e.*, that precede an executive decision). *See id.*[3] Contrary to Appellants' argument, the

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1985 (enacted Mar. 28, 1999). A statutory definition of "working papers" also was added to VFOIA in 1999. *Id.*

[3] These criteria are explicit in the statutory definition of "working papers." Va. Code Ann. § 2.2-3705.7 ("'Working papers'" means those records prepared by or for a public official identified in this subdivision for his personal or deliberative use."). And it's well-supported by the legislative context of VFOIA as to "correspondence." *See* Appellee's Br. at 26–30. Appellee's argument that exempt "correspondence" is limited to portions of records of which enumerated officials are the sole senders or sole recipients of predecisional and deliberative material is buffeted by the fact that the relevant statutory language was drafted in the 1980s, when the legislature was likely contemplating the use of physical letters, rather than electronic communications. *See* Va. Code Ann. § 2.1–342(B)(4) (1998); *see also* 1998 H.B. 1985 (enacted Mar. 28, 1999). The statutory definition of "working papers" was added in 1999. *Id.*

Working Papers Exemption was not codified to absolutely insulate the executive from transparency and, thus, from accountability. To illustrate, a key limit on the reach of the exemption is that it is predecisional; once the executive renders a decision, the exemption no longer attaches to documents and correspondence pertaining to the executive's decision-making process. *See* Freedom of Information Advisory Op. AO-12-00 (Dec. 12, 2000), https://perma.cc/Y5B2-SWFH ("the [record] in question lost its working papers status when the [government body] decided to proceed with the [executive action].").[4]

Another key limiting principle—relevant here—is that records written or received by people *not* specified in the statute cannot be presumed to be exempt; there must be a sufficient evidentiary demonstration that they are closely held and deliberative. This is true for correspondence, *see* Freedom of Information Advisory Op. AO-12-00 (Dec. 12, 2000), https://perma.cc/Y5B2-SWFH ("Merely because [an official] sent the document to the [executive] and it passed through his hands would not be enough to invoke the

[4] Advisory opinions of the Virginia Attorney General and VFOIA Counsel may be viewed as persuasive authority. *See, e.g., Fitzgerald v. Loudoun Cnty. Sheriff's Off.*, 289 Va. 499, 504–05 & n.2 (2015)

protection of the working papers exemption."), and for working papers, *see* Freedom of Information Advisory Op. AO-01-16 (July 11, 2016), https://perma.cc/6Z7L-CYRC ("[E]ven if the [record] was originally a working paper prepared for the Office of the Governor's personal or deliberative use, it has subsequently been disseminated beyond that original personal or deliberative use and therefore is no longer excluded from mandatory disclosure as a working paper."); *see also* Freedom of Information Advisory Op. AO-08-00 (Nov. 8, 2000), https://perma.cc/QVW2-A53G ("[O]nce the chief executive disseminates any records held by him, those records lose the exemption authorized by subdivision."). [5]

In short, the purpose of the exemption is to safeguard the Governor's internal deliberative processes. Accordingly, when it is clear from the terms of a request that responsive records are held by

[5] Attorney General opinions interpreting Va. Code Ann. § 2.1-342(b)(4) (1950), the predecessor statute to Va. Code Ann. § 2.2-3705.7(2), conclude that an even stricter standard should apply. *See* 1982-83 Va. Op. Att'y Gen. 724 (1983), 1983 WL 164837 (opining that if a record "is held by the chief executive officer . . . it would be exempt from mandatory disclosure . . . [but I]f, however, the letter has been disseminated, it would lose the exemption and would be subject to mandatory disclosure under the act"); 1981–82 Op. Atty. Gen. 438, 1982 WL 175876; 1976–77 Op. Atty. Gen. 315, 1977 WL 27388.

those outside the small group of executive officials named in the Act, a trial court is well within its discretion to find that those records are not personal or deliberative—*regardless* of whether the face of such records shows that they were also, at one time, received and even considered by the Office of the Governor. *See* Freedom of Information Advisory Op. AO-12-00 (Dec. 12, 2000), https://perma.cc/Y5B2-SWFH (exemption waived as to documents shared with officials outside the executive office). This is *especially* true where, as here, the government does not even attempt to submit evidence extrinsic to the withheld records to attempt to meet its burden of proof; the face of a withheld record cannot alone demonstrate it is personal and deliberative.

Appellee's requests, by their terms, were limited to records that do not necessarily implicate the Working Papers Exemption. Following discussions with Appellants, Appellee submitted narrowed requests for information. Petition ¶¶ 50, 53. One of those narrowed requests sought communications between the Office and "any group or individual outside the government of Virginia," documents "provided (or made accessible) to any group or individual outside the government of Virginia," communications between the Office and "an

employee or employees of the Commonwealth . . . who work outside the Office of the Governor," and "documents provided (or made accessible) to an employee or employees of the Commonwealth . . . who work outside the Office of the Governor." Pet. Ex. N, R. at 73–74 ("Request 758"). Similarly, another request sought communication between members of the Virginia Governor's staff and specific members of the public. Pet. Ex. Q, R. at 84–85 ("Request 759").

As they did below, Appellants ask this Court to adopt an impermissibly broad interpretation of the Working Papers Exemption, arguing that it exempts from disclosure all "written communications to and from the Governor's Office." Br. of Appellants at 18. According to Appellants, this broad and novel construction of the Working Papers Exemption is needed so as not to "impair[] [the Governor's] ability to carry out his constitutionally required duties." *Id.* But the plain language of the Act does not permit application of the Working Papers Exemption to all correspondence to and from every employee of the Governor's Office. Nor does the exemption, by its plain terms, apply to any and all records that cross the desk of any individual within the Office of the Governor. Br. of Appellants at 21–22.

If there were no such limits on the executive's ability to assert the exemption, officials would be free to invoke the exemption in perpetuity across the entire government, simply by establishing pro forma procedures that make officials within the Office of the Governor party to any official correspondence or document. The upshot would be freedom to thwart the legislature's intent in enacting VFOIA: using the Working Papers Exemption to fully withhold information that is merely embarrassing or reveals malfeasance, mismanagement, and waste.

II. The trial court correctly refused to adopt an interpretation of the Working Papers Exemption that would enable government agencies to shield communications having little or no connection to the purpose of the exemption.

The intent of VFOIA is to ensure broad access to government records. *See* Freedom of Information Advisory Op. AO-12-00 (Dec. 12, 2000), https://perma.cc/Y5B2-SWFH ("FOIA ensures the people of the Commonwealth ready access to records in the custody of public officials . . . provisions of FOIA should be construed liberally to afford access to government, and the exemptions should be construed narrowly."). And, to that end, the Working Papers Exemption must be read to apply only where its application would serve the purpose of the exemption. *See* Freedom of Information Advisory Op. AO-01-16

(July 11, 2016), https://perma.cc/6Z7L-CYRC (courts considering whether the Working Papers Exemption is applicable should consider "[t]he purpose for which the record was created," in addition to "the person for whom the record was created," and "whether the official who holds the exemption has disclosed the record to others.").

Several examples from recent years demonstrate the importance of a narrow interpretation.

In response to multiple requests in 2022, the Virginia Department of Education ("VDOE") refused to disclose information about its own policies, citing the Working Papers Exemption held by the Office of the Governor. Early in 2022, members of the media sought a VDOE policy detailing how to implement Governor Youngkin's Executive Order creating the tip line to report "divisive content." Although the withheld records pertained only to VDOE's implementation of the Executive Order, and although they had been shared broadly among VDOE officials not enumerated in the Working Papers Exemption, VDOE nonetheless initially asserted the exemption to block disclosure. Megan Pauly, Ben Paviour, *Youngkin Refuses to Disclose Teacher Tip Line Submissions*, VPM News, (Feb. 3, 2022) https://perma.cc/T3YT-3P2L. Similarly, VDOE asserted the Working

Papers Exemption when it refused to disclose records sought by a reporter with the Richmond Times-Dispatch seeking communications between state officials and a Washington, D.C.-based think tank. Patrick Wilson, *Judge Orders Va. Department of Education to Provide More Detail in FOIA Request* (Apr. 8, 2022) https://perma.cc/8SG4-8ZJN.

When a coalition of media organizations initially sued the Youngkin Administration for access to emails received through the Tip Line, the government attempted to assert the Working Papers Exemption to all responsive records, before eventually disclosing a subset of emails held by VDOE pursuant to a settlement of the coalition's VFOIA suit. Alia Wong, Nirvi Shah, and Nick Penzenstadler, *Virginia's governor set up a tip line to crack down on CRT. Parents used it for other reasons*, USA Today, (Nov. 3, 2022), https://perma.cc/XS3F-KZ36.

And when a requestor sought access to a list of individuals with felony convictions that former Governor Terry McAuliffe had pardoned during his administration and subsequently disseminated to the Department of Elections, the administration asserted the Working Papers Exemption to avoid complying with VFOIA's disclosure

requirements. Graham Moomaw, *FOIA council: McAuliffe's List for Felon Voting Order Can't be Kept Secret as Working Paper*, Richmond Times-Dispatch, (July 12, 2016), https://perma.cc/4BX8-WJUK. The FOIA council later went on to opine that this interpretation ran contrary to the legislature's intent in enacting the exemption. Freedom of Information Advisory Op. AO-01-16 (July 11, 2016), https://perma.cc/6Z7L-CYRC.

Under Appellants' interpretation of the working papers exemption employees within the Governor's Office and those in other public agencies — even those not included among or corresponding directly with those officials within the statutory definition of "Office of the Governor"—would be free to withhold information, merely based on habit, speculative risk, or fear of embarrassment. This result would render the statute toothless and undermine the public's right of access to public records in the Commonwealth.

III. If Appellants' interpretation of VFOIA procedure is accepted, it will limit the public's access to government records in contravention of the General Assembly's intent.

The purpose of VFOIA is to "promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government." Va. Code Ann. § 2.2-3700(B). As noted above, the Act requires that exemptions to its mandate of disclosure be narrowly construed, and it places the burden on an agency withholding a record to demonstrate by a preponderance of the evidence that an exemption was properly applied.

Appellants contend that public officials are entitled to a "presumption" that they have complied with VFOIA—a presumption that, if not overcome, would justify granting a demurrer in the face of a Petition to enforce compliance with VFOIA's requirements. No such presumption exists. On the contrary, in enacting the VFOIA statute, the General Assembly deliberately placed the burden on agencies to demonstrate compliance with the Act and enacted special procedures for VFOIA cases that differ from those applicable in common law mandamus actions:

> By granting concurrent jurisdiction to the circuit and general district courts, expediting the proceedings, providing for an

> award of costs and attorneys' fees, and shifting the burden of proof to the public body, the General Assembly has evinced an intent to provide mandamus relief under [VFOIA] different from that of common law mandamus. These distinctions are entirely consistent with the express purpose of the FOIA and manifestly facilitate access to appropriate governmental records.

Cartwright, 270 Va. at 66.

Appellants cite outdated case law concerning the application of the common law mandamus standard to a petition for injunctive relief under VFOIA. *WTAR Radio-TV Corp. v. City Council of City of Virginia Beach*, 216 Va. 892 (1976). Since that decision, however, the General Assembly has enacted Va. Code Ann. § 2.2-3713, which expressly overrides the common law requirement that a petitioner for writ of mandamus prove that he or she lacks an adequate remedy at law. *Cartwright*, 270 Va. at 66. As the Supreme Court explained in *Cartwright*, VFOIA deliberately puts in place a rule that is "contrary to the rule in common law mandamus proceedings which places the burden on the petitioner to prove the violation of a right or privilege and in which there is a presumption of regularity in the conduct of government business." *Id.* at 65 (*citing Legum v. Harris*, 205 Va. 99, 103 (1964)).

The statutory framework is clear and unambiguous. Even "a single instance of denial of the rights and privileged conferred by

[VFOIA] shall be sufficient to invoke the remedies granted herein." Va. Code Ann. § 2.2-3713(D). In any action to enforce VFOIA's provisions, "the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evidence." Va. Code Ann. § 2.2-3713(E). And "*any failure* by a public body to follow the procedures established by [VFOIA] shall be presumed to be a violation of [VFOIA]." *Id.* (emphasis added).

Appellants argue that this reading would "all but eliminate" the Working Papers Exemption from the Act. Br. of Appellants at 23–24. Not so. Appellants seek to evade their evidentiary burden to show that the records sought are truly personal and deliberative, and closely held by officials enumerated in the statute: thereby implicating the rationales underpinning the Working Papers Exemption.

Public records requestors face a central dilemma. When exercising their right to public records, requestors know little to nothing about the records they seek to obtain. Meanwhile, the government agency, often with an incentive to keep the records secret, has full control over information that might be necessary for the requestor to vindicate their right of access. This dilemma underlies VFOIA's mandate that exemptions from disclosure be "narrowly

construed." Va. Code Ann. § 2.2-3700(B). Without this requirement, government officials would be free to circumvent public oversight and avoid accountability for malfeasance and mismanagement.

The records dispute here illustrates why Appellants position is untenable. Appellants made clear that there are "over 800 pages" of documents responsive to Appellee's request. R. 230. Based on the wording of Appellee's requests, which ultimately sought records outside the scope of the Working Papers Exemption—including those that were disseminated outside the Governor's Office and those between officials within the Office, but including nongovernmental entities—the Circuit Court had a sufficient basis to decide as a matter of law that all responsive records should be disclosed.

Despite having unfettered access to the relevant trove of information, Appellants put forth no evidence to meet their burden of showing that the Working Papers Exemption applied to the withheld documents. Appellants declined to provide a *Vaughn* index, so it is impossible to ascertain whether the Working Papers Exemption might properly apply to any of the withheld records. R. 230. And now that the Circuit Court has ordered the documents to be released, Appellants argue that the court erred because it did not invest the

tremendous judicial resources necessary to sift through 800 pages of documents in search of evidence that might support the Government's position.

But rather than accept the natural consequence of an adverse ruling after failing to meet their clearly enumerated evidentiary burden, Appellants would have this Court disturb the sound discretion of Trial Courts in this state—not to vindicate VFOIA's broad purpose of disclosure, but to deputize the judiciary in a bid to withhold documents from the public.

In enacting the VFOIA, the General Assembly recognized the importance of safeguarding against these outcomes. Endorsing Appellants' argument would thwart current and future efforts to enforce a key democratic check on unrestrained government power, ultimately to the public's detriment.

CONCLUSION

For the foregoing reasons and those in Appellee's brief, amici urge this Court to uphold the order issued by the Circuit Court.

Dated: August 7, 2023

Respectfully submitted,

/s/ Lin Weeks

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APPENDIX A: DESCRIPTION OF AMICI CURIAE

The Reporters Committee for Freedom of the Press was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today it provides pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

Founded in 1996, the **Virginia Coalition for Open Government ("VCOG")** is a non-partisan organization dedicated to making access to records and meetings of Virginia state and local government as open and accessible as possible. VCOG has more than 150 individual and institutional dues-paying members with membership open to anyone.

The Media Institute is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

The National Freedom of Information Coalition is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the District of Columbia. Through its programs and services and national member network, NFOIC promotes press freedom, litigation and legislative and administrative reforms that ensure open, transparent and accessible state and local governments and public institutions.

The National Press 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 News Leaders Association was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech

and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

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 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.

CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a copy of the foregoing BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AS *AMICUS CURIAE* was e-mailed on this 7th day of August, 2023, to the following:

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I further certify that this brief complies with Rule 5A:19(a) because the applicable portion contains 3,800 words.

By: */s/ Lin Weeks*

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