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IN THE INDIANA SUPREME COURT CASE NO._____

COURT OF APPEALS CASE NO. 23A-PL-2832

CHRISTOPHER NARDI, Appellant/Plaintiff, v. J. BRADLEY KING AND ANGELA M. NUSSMEYER in their official capacities as members of the Indiana Election Division, Appellees/Defendants.	)	Appeal from Marion Superior Court Case No. 49D11-2107-PL-22664 The Honorable John F. Hanley, Judge

BRIEF OF PROPOSED *AMICI CURIAE* REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, GANNETT, GRAY MEDIA GROUP, INDIANA BROADCASTERS ASSOCIATION, E.W. SCRIPPS CO., NEWS/MEDIA ALLIANCE, AND TEGNA IN SUPPORT OF APPELLANT

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STATEMENT OF INTEREST

Lead *amicus* **the Reporters Committee for Freedom of the Press** is an unincorporated nonprofit association that provides pro bono legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists, including the right to access and report on public records. The Reporters Committee previously has appeared as *amicus curiae* in Indiana state and federal courts in cases implicating newsgathering rights. *See, e.g.*, Br. of Amici Curiae Reporters Comm. for Freedom of the Press, Soc'y of Pro. Journalists, & 15 Media Orgs. in Supp. of Appellee-Plaintiff, *Ind. Dep't of Corr. v. Toomey*, 162 N.E.3d 1099 (Ind. 2021) (No. 19S-PL-401), 2020 WL 10485708 (arguing that the Indiana Supreme Court should affirm the trial court's ruling that the Secrecy Statute violates the First Amendment and the Indiana Constitution). Other *amici* are the following Indiana news and media organizations: **The E.W. Scripps Co.** (WRTV), **Gannett Co. Inc.** (publisher of *The Indianapolis Star*), **Gray Media Group** (WFIE and WNDU), **Indiana Broadcasters Association**, **News/Media Alliance**, and **TEGNA, Inc**. (WTHR).[1]

Indiana journalists and news organizations rely on the Access to Public Records Act, Ind. Code §§ 5-14-3-1 *et seq*. ("APRA"), to gather information about the government and report on matters of vital public concern. *Amici* thus have a strong

[1] Statements of interest for all *amici* are included below as Appendix A. No party or person other than *amici* authored, paid for, or contributed payment for this brief.

interest in ensuring that such laws are interpreted by courts in a manner that facilitates public access to government records.

SUMMARY OF ARGUMENT

The Petition of Appellant Christopher Nardi presents a question of first impression for this Court: When has a plaintiff "substantially prevailed" in an action to obtain access to public records under Indiana's Access to Public Records Act, Ind. Code §§ 5-14-3-1 *et seq*. ("APRA" or the "Act"), for the purpose of obtaining an award of attorney's fees and costs? *Amici* write to aid the Court in resolving this question of utmost importance to the news media—and, ultimately, the public at large—by addressing 1) the purpose of APRA's mandatory fee-shifting provision; 2) that provision's critical role in the Act's statutory framework; and 3) judicial interpretations of the term "substantially prevailed" in other public records statutes.

APRA is a powerful tool for ensuring government transparency and accountability in Indiana, but its efficacy depends on members of the press and public who are willing and able to seek enforcement of its requirements. Because the executive branch does not enforce APRA, the Act's fee-shifting provision—Ind. Code § 5-14-3-9(i)—plays an essential role in a statutory scheme designed to ensure public access to government information by discouraging the improper withholding of public records by public agencies and encouraging members of the public—including journalists and news organizations—to challenge violations of the Act.

While Appellant is not a journalist, the availability of attorney's fee awards in successful APRA litigation is an issue of crucial importance to the press—especially for independent journalists and smaller, under-resourced newsrooms. At

a time when the news media is faced with both increased government secrecy and decreased financial resources to spend challenging that secrecy, it is crucial for journalists and newsrooms to know that if they pursue meritorious APRA litigation, and their efforts to vindicate the public's right of access are successful, they will receive an award of reasonable attorney's fees and costs. Because the Court of Appeals failed to properly interpret and apply APRA's mandatory fee-shifting provision, *amici* urge this Court to grant Appellant's petition to transfer.

ARGUMENT

I. "Substantially prevails" must be construed in a manner that is consistent with APRA's statutory language and purpose.

A. APRA's mandatory fee-shifting provision is central to a statutory scheme designed to facilitate government transparency.

The General Assembly enacted APRA in 1983 as a comprehensive replacement for the Hughes Anti-Secrecy Act.[2] Among other things, APRA broadened the definitions of "public record" and "public agency," and expressly placed the burden of proof on an agency seeking to withhold a public record to justify that withholding. *See* Eric J. Graninger, Note, *Indiana Opens Public Records: But (b)(6) May Be the Exemption that Swallows the Rule*, 17 IND. L. REV. 555 (1984); *see also* Ind. Code § 5-14-3-1 (placing the burden on "the public agency that would deny access to the record and not on the person seeking to inspect and copy the record"). In enacting APRA, the General Assembly commanded that its provisions be "liberally construed" in favor of disclosure. Ind. Code § 5-14-3-1; *see*

[2] Ind. Code § 5-14-1-1 to -6 (1982) (repealed effective Jan. 1, 1984).

Shepherd Props. Co. v. Int'l Union of Painters & Allied Trades, Dist. Council 91, 972 N.E.2d 845, 852 (Ind. 2012) ("[T]he legislature has made it clear that the APRA must be 'liberally construed to implement' the policy of full access to public records and transparency of government affairs.").

Recognizing that the expense of litigation can present a significant barrier for members of the public and press who would seek to challenge a government agency's wrongful denial of an APRA request, the General Assembly amended the Act in 1999 to strengthen its fee-shifting provision. Among the changes, the General Assembly eliminated the requirement for a plaintiff to show that the agency's denial was either "knowing or intentional" to recover attorney's fees and costs; as amended, the custodian's state of mind is irrelevant. 1999 Ind. Legis. Serv., P.L. 191-1999 (S.E.A. 1) (West). The General Assembly also made an award of fees to an APRA plaintiff mandatory whenever the "plaintiff substantially prevails." Ind. Code § 5-14-3-9(i); *see Indianapolis Newspapers v. Ind. State Lottery Comm'n*, 739 N.E.2d 144, 156 (Ind. Ct. App. 2000) ("[T]he award of attorney fees is no longer discretionary, but mandatory, when the requirements of [APRA] are otherwise met.").

By codifying a mandatory award of attorney's fees and costs to any "substantially prevail[ing]" APRA plaintiff, the General Assembly simultaneously incentivized agency compliance with the Act and encouraged members of the public and press to pursue meritorious litigation when agencies fail to comply. The Act's

current fee-shifting mandate has been Indiana law for nearly 25 years and has been consistently applied by lower appellate courts throughout the state.[3]

B. An APRA plaintiff who, through litigation, obtains a public record or wins a disputed issue may "substantially prevail" regardless of the number or nature of records that were wrongfully withheld.

APRA does not define "substantially prevails," and this Court has not had occasion to interpret this statutory language. However, prior decisions of the Indiana Court of Appeals indicate, correctly, that the term can apply to any requester who pursues legal action and obtains a favorable result. For example, in *Sullivan v. National Election Defense Coalition*, 182 N.E.3d 859, 875 (Ind. Ct. App. 2022), the government argued that because the lower court found that the plaintiff's requests were not "reasonably particular"—a requirement of all APRA requests, but one that had not been raised by the custodian as an original basis for denying the requests—the plaintiff could not be found to have "substantially prevail[ed]," *id*. The Court of Appeals rejected that argument, observing that the plaintiff had since prevailed as to other issues, including the applicability of exemptions, and had obtained documents despite the requests' lack of particularity. *Id.* at 875-76. The court examined both the requests and the course of litigation and concluded the plaintiff had "substantially prevailed on the merits of [the] APRA action." *Id.*

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[3] *See, e.g.*, *Shepherd Props. Co.*, 972 N.E.2d at 853 (holding that APRA's mandatory fee-shifting provision allows for recovery against private entities); *Sullivan v. Nat'l Election Def. Coal.*, 182 N.E.3d 859, 874–76 (Ind. Ct. App. 2022) (holding that fee-shifting provision includes recovery of appellate fees); *Indianapolis Newspapers*, 739 N.E.2d at 156 (extending mandatory recovery of fees to collateral litigation).

(explaining that whether a plaintiff has substantially prevailed should not be decided based on a single issue "regardless of any other issues in the case or its ultimate outcome"); *see also Indianapolis Newspapers*, 739 N.E.2d at 156 (holding that if the plaintiff substantially prevailed, the government would be liable for attorney's fees under APRA for at least as long as it refused disclosure).

Both *Sullivan* and *Indianapolis Newspapers*, while addressing issues different from the precise one raised in the Petition, reflect this Court's admonition that "[i]n construing the APRA's attorney's fees provision," the judiciary's "primary task is to give effect to the intent of the legislature," which "intended the language used in the statute to be applied logically and consistently with the APRA's underlying policy and goals." *Shepherd Props. Co.*, 972 N.E.2d at 852.

The Court of Appeals below ignored that mandate and its obligation to construe the law liberally when it denied Appellant any fee recovery at all. Specifically, the Court of Appeals reasoned that the purportedly "mundane" nature of the public record Appellant eventually obtained by court order —a redacted maintenance contract—"undercut any suggestion that its disclosure somehow outweighed the nondisclosure of the other two documents" he had requested. *See Nardi v. King*, No. 23A-PL-2832, 2024 WL 2197137, at *3 (Ind. Ct. App. May 16, 2024). Without citation or explanation, the Court of Appeals concluded that the redacted record Nardi won was "mundane"—despite the fact that Appellees had engaged in a lengthy legal fight to withhold it—and that its purported "mundane[ness]" should preclude Nardi from recovering fees. *Id.* But as the trial

court correctly concluded, the contract is a public record that the agency was required to disclose. And, yet, in order to access it, Appellant had to sue a state agency, litigate the matter for more than two years, and obtain a court order. On these facts, the Court of Appeals should have affirmed the trial court's conclusion that Appellant "substantially prevail[ed]" in the litigation and remanded for an assessment of his fees.

II. The Court of Appeals' erroneous interpretation of APRA's fees provision is consequential to the news media's ability to pursue information and, in turn, the public's right to know.

Journalists play a vital and constitutionally recognized role in our democracy by gathering and disseminating information about the government. As the Supreme Court of the United States has observed:

> [I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations. Great responsibility is accordingly placed upon the news media to report fully and accurately the proceedings of government, and official records and documents open to the public are the basic data of governmental operations. Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally.

Cox Broad. Corp. v. Cohn, 420 U.S. 469, 491–92 (1975).

The willingness of the press in Indiana—including freelance and independent journalists, and news organizations both small and large—to enforce the right of public access to government records depends in significant part on their ability to obtain an award of attorney's fees and costs if they are successful. Because fee-shifting provisions allow a successful plaintiff to recover their reasonable

expenditures, they increase news organizations' access to counsel, who may work on a pro bono or contingency fee basis. *See Miller v. W. Lafayette Cmty. Sch. Corp.*, 665 N.E.2d 905, 906 (Ind. 1996) (recognizing "more specific purpose" of statutory fee recovery provisions is "to enable potential plaintiffs to obtain the assistance of competent counsel in vindicating their rights" (quoting *Kay v. Ehrler*, 499 U.S. 432, 436–38 (1991))). The prospect that journalists will be denied attorney's fees even if they succeed in a meritorious APRA lawsuit because a court might consider the records they obtained "mundane," or not sufficiently numerous, will discourage journalists from pursuing lawsuits to vindicate the public's access rights under the Act.

Many news organizations in Indiana have far fewer financial resources to devote to litigation than they had in the past, making it more vital than ever that cost not be a barrier to meritorious APRA litigation. *See* Heath Hooper & Charles N. Davis, *A Tiger with No Teeth: The Case for Fee Shifting in State Public Records Law*, 79 MO. L. REV. 949, 969 (2014) (observing that "[w]ith fewer financial resources available to news outlets, it seems inevitable that the ability to pursue open government will be harmed"); Knight Found., *In Defense of the First Amendment* 27 (2016), https://knightfoundation.org/wp-content/uploads/2020/03/KF-editors-survey-final_1.pdf (interviewing news editor, who stated, "Government agencies are well aware that we do not have the money to fight. More and more, their first response to our records request is 'Sue us if you want to get the

records.'").[4] While dwindling resources might otherwise hinder newsrooms' ability to demand government transparency, through mandatory fee-shifting statutes, like the Act's, such harm "may be decreased, if not avoided altogether." Hooper & Davis, *supra*, at 969 (noting that "fee shifting" encourages "enforcement of the promises made by public records laws").

To be sure, this Court need not look far to find examples of Hoosier journalists relying on APRA to successfully enforce their right to access public records for the benefit of the public—and obtaining an award of attorney's fees and

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[4] Fee-shifting provisions serve several purposes, including facilitating the administration and enforcement of public records laws. As the Senate Report accompanying the 1974 amendments to the federal Freedom of Information Act ("FOIA") explained:

> Generally, if a complainant has been successful in proving that a government official has wrongfully withheld information, he has acted as a private attorney general in vindicating an important public policy. In such cases it would seem tantamount to a penalty to require the wronged citizen to pay his attorneys' fee to make the government comply with the law.

S. Rep. No. 93-854, at 19 (1974), *reprinted in* H.R. Comm. on Gov't Operations & S. Comm. on the Judiciary, 94th Cong., Freedom of Information Act and Amendments of 1974 (P.L. 93-502) Source Book: Legislative History, Texts, and Other Documents, at 171 (Joint Comm. Print 1975), *available at* http://perma.cc/X2XW-9B4K. In other words, because the executive branch does not enforce FOIA, it is up to individual members of the press and the public to do so by pursuing administrative remedies and, where necessary, litigation. FOIA's fee-shifting provision thus serves to "vindicat[e] national policy," *id*. at 170 (quoting *Northcross v. Bd. of Educ. of Memphis City Schs.*, 412 U.S. 427, 428 (1973)), just as APRA's vindicates the policy goals of Indiana, *supra* p. 11. This is true even though fee awards under FOIA are discretionary rather than mandatory as under APRA. *Compare* Ind. Code § 5-14-3-9(i), *with* 5 U.S.C. § 552(a)(4)(E) ("The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.").

costs as a result. In 2018, a reporter from the Indianapolis Star discovered that former Attorney General Curtis Hill and a colleague were using personal e-mail addresses to conduct public business. *See, e.g.*, Johnny Magdaleno, *Ex-Attorney General Curtis Hill broke Indiana public records law, judge rules*, INDIANAPOLIS STAR (Apr. 1, 2021), https://www.indystar.com/story/news/2021/04/01/lawsuit-indystar-public-records-indiana-indianapolis-star-ex-attorney-general/4809323001/. When the newspaper requested the e-mail addresses under the Act, Hill's office refused to provide them, even after the Indiana Public Access Counselor said they should be public. *Id*. The Indianapolis Star's only recourse was to file suit to obtain the e-mail addresses, which ultimately resulted in their disclosure. And, despite the fact that some might consider that information "mundane," the Marion Superior Court Civil Division 13 awarded the Indianapolis Star $49,150.59 in attorney's fees and costs. *See* Order on Mot. for Entry of Award for Attorneys' Fees/Costs & Civil Penalties, *Ind. Newspapers, LLC v. Off. of Att'y Gen.*, No. 49D13-1907-MI-026838 (Marion Super. Ct. Jan. 15, 2021).

Even though the litigation did not result in reams of previously withheld public records being disclosed (instead, just two e-mail addresses), the news organization had been left with no other option than to seek judicial intervention to compel the agency to turn over records it should have provided from the beginning. The newspaper was therefore entitled to recover the nearly $50,000.00 it was forced to incur to obtain those e-mail addresses through litigation. Any other agency that may be inclined to deny access to disclosable public records need only look to cases

like this one to be reminded of the potential financial consequences of violating APRA. As the then-executive director of the Hoosier State Press Association, Steve Key, said of the decision: "With the tough times newspapers are going through now, there's a greater reluctance because of the potential costs of litigation for newspapers to push for their rights to records . . . [s]o kudos to (IndyStar) for making the effort." Magdaleno, *Ex-Attorney General Curtis Hill broke Indiana public records law, judge rules*, *supra*.

Here, given that the trial court's and Court of Appeals' decisions lack any detailed consideration of the broader transparency issues at stake, and because this Court has not previously had occasion to address what is required for a plaintiff to "substantially prevail" under APRA, this Court should accept transfer of this case to provide necessary guidance to lower courts. And because Appellant's lawsuit resulted in a judicial order requiring the release of a document that the agency wrongly withheld, this Court should hold that Appellant "substantially prevail[ed]" in his APRA lawsuit and is entitled to an award of reasonable attorney's fees.

III. The Court of Appeals' opinion is out of step with other courts, and if it is not reversed, would make Indiana an outlier.

While the interpretation of the term "substantially prevails" in APRA is a question of first impression for this Court, courts in other states have construed and applied the same statutory language from their respective public records statutes. These decisions provide persuasive guidance here. *See King v. State*, 153 N.E.3d 324, 329 (Ind. Ct. App. 2020) ("[F]aced with an issue of first impression, [courts] may also consider persuasive guidance from similar out-of-state decisions."); *The*

Blakley Corp. v. EFCO Corp., 853 N.E.2d 998, 1004 (Ind. Ct. App. 2006) ("[W]here no Indiana cases adequately address the issues involved in a case, decisions of other jurisdictions may be instructive" and "where no Indiana case law is on point our courts have looked to federal cases as persuasive authority."). They also illustrate that the Court of Appeals' application of the Act's fee-shifting provision in this case is out of step with the well-reasoned decisions of other courts.

In Arizona, like Indiana, "substantially prevailed" is not defined in the state's public records law, which provides that fees may be awarded only if "the person seeking public records has substantially prevailed." Ariz. Rev. Stat. § 39-121.02(B).[5] In analyzing the plain meaning of that term and goal of the public records law, the Arizona Supreme Court held that "a party has 'substantially prevailed' if, after a comprehensive examination by the trial court, it was more successful than not in obtaining the requested records, defeating the government's denial of access to public records, or securing other relief concerning issues that were contested before litigation was initiated." *Am. C.L. Union of Ariz. v. Ariz. Dep't of Child Safety*, 493 P.3d 885, 888 (Ariz. 2021). In so holding, the court expressly rejected the notion that the standard be "based" solely "on . . . the documents [the plaintiffs] have received." *Id.* at 889. Instead, emphasizing the "broad and flexible" nature of the statutory language, the court explained that "forcing compliance by a recalcitrant government entity should factor into whether

[5] While Arizona's fee-shifting provision is discretionary, unlike Indiana's mandatory provision, under either statutory framework, the predicate to an award of fees is a finding that the plaintiff substantially prevailed.

a party substantially prevailed even if it does not yield a document bounty." *Id.* (citation omitted). After all, in some public records cases, "[s]ecuring a legal precedent may well be as important, if not more so, than the desired documents." *Id.* Under such a "comprehensive," flexible analysis, a court may award fees "even if [its] ruling does not directly result in the production of *any* documents." *Id.* (emphasis added).

The North Carolina Court of Appeals recently reached the same result. That state's public records law provides that if "a party successfully compels the disclosure of public records, the court shall allow a party seeking disclosure of public records who *substantially prevails* to recover its reasonable attorneys' fees if attributed to those public records." N.C. Gen. Stat. § 132-9(c) (emphasis added). After the city of Charlotte, North Carolina denied access to a public record requested by news organization WBTV, WBTV filed suit. *See Gray Media Grp., Inc. v. City of Charlotte*, 892 S.E.2d 629, 642 (N.C. Ct. App. 2023). The city subsequently produced the requested record while WBTV's summary judgment motion was pending. The trial court then ruled that WBTV was not entitled to an award of attorney's fees because the city produced the document voluntarily; in other words, that WBTV had not substantially prevailed. *Id*. at 633. The Court of Appeals reversed. It observed "that by adding the word substantially to the language of the statute, the Legislature expanded the class of parties entitled to attorneys' fees under the Public Records Act," which "includes entitling to attorneys' fees *parties that may not receive all requested relief but do obtain relief*, such as that

resulting from the change in position of the opposing party during the litigation." *See id.* at 642 (emphasis added).[6] The record was produced only after WBTV pursued it under the public records law, through months of correspondence with the city, and then "when that was not successful, through statutorily-authorized litigation." *Id.* The city did not yield the document until WBTV's summary judgment motion was filed, over a year after the initial request was made. *Id.* The court held that because "[WBTV's] actions substantially precipitated the ultimate disclosure of the records," WBTV had substantially prevailed within the meaning of the public records law. *Id.*

Further persuasive authority can be found in Wisconsin, where under that state's public records law, a court must award fees to a requester who "prevails in whole *or in substantial part*" by court order. Wis. Stat. § 19.37(2)(a) (emphasis added); *see also Meinecke v. Thyes*, 2021 WI App 58, ¶ 9, 399 Wis. 2d 1, 7, 963 N.W.2d 816, 819 (observing that plaintiff could prevail in substantial part "even if not successful in obtaining access to all requested documents"). To prevail means "the party must obtain a judicially sanctioned change in the parties' legal relationship." *Friends of Frame Park, U.A. v. City of Waukesha*, 2022 WI 57, ¶ 38, 403 Wis. 2d 1, 25, 976 N.W.2d 263, 275, *reconsideration denied*, 2024 WI 4, ¶ 38, 5 N.W.3d 609. Wisconsin plaintiffs have been found to have prevailed in substantial part "even when the requester receives a single record, or even only part of a

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[6] North Carolina's fee-shifting provision is mandatory in favor of a substantially prevailing party except in certain narrow circumstances set forth in the statute. *See* N.C. Gen. Stat. § 132-9(c)(1)–(3).

record." *Meinecke*, 2021 WI App 58, ¶¶ 12–13. The court in that case wrote that "both federal and Wisconsin cases teach that the 'substantially prevailed' . . . inquiry is whether the requester prevailed in obtaining access to wrongfully withheld public records, and thus, is eligible to recover fees, not the extent to which exempt records were properly withheld." *Meinecke*, 2021 WI App 58, ¶ 21.

The sound reasoning in the foregoing judicial decisions is grounded in the plain meaning of the statutory text and the transparency and public accountability goals of the relevant public records laws. This Court should likewise undertake a "comprehensive" analysis under APRA's fee-shifting provision and hold that the Court of Appeals' rejection of an award of attorney's fees—on the ground that the record obtained by Appellant was purportedly "mundane"—contravenes the language and intent of the Act.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to grant Appellant's petition for transfer.

Respectfully submitted, this first day of July 2024.

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APPENDIX A

STATEMENTS OF INTEREST OF *AMICI CURIAE*

The E.W. Scripps Co. is the nation's fourth-largest local TV broadcaster, operating a portfolio of 61 stations in 41 markets, including WRTV in Indianapolis. 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.

Gannett is the largest local newspaper company in the United States, and the publisher of *The Indianapolis Star*. Gannett's more than 200 local daily brands in 43 states — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month. In addition to *The Indianapolis Star*, it publishes *The Herald-Times* (Bloomington), *The Times-Mail* (Bedford), *The Reporter Times* (Martinsville), *South Bend Tribune*, *Journal & Courier* (Lafayette), *Palladium-Item* (Richmond), *The Star Press* (Muncie), and *The Courier & Press* (Evansville).

Gray Media Group, Inc. owns Indiana television stations in Evansville (WFIE) and South Bend (WNDU).

The Indiana Broadcasters Association ("IBA") is an alliance of more than 250 member radio and television broadcasters in Indiana. The IBA has a substantial interest in the newsgathering process and the public's access to public

records and matters of public concern and safety. It also advocates for member stations and represents the broadcasting industry before the Indiana General Assembly and in Washington, D.C. on communications matters before Congress and at the Federal Communications Commission.

The News/Media Alliance represents over 2,200 diverse publishers in the U.S. (including Indiana) and internationally, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers who have printed news since before the Constitutional Convention. Its membership creates quality journalistic content that accounts for nearly 90 percent of daily newspaper circulation in the U.S., over 500 individual magazine brands, and dozens of digital-only properties. N/MA diligently advocates for the rights of its publishers to access public records, public meetings, and court records, and has been active in its support for an open and transparent government.

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. 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. 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.

TEGNA Inc. owns or services (through shared service agreements or other similar agreements) 64 television stations in 52 markets, including WTHR in Indianapolis.

CERTIFICATE OF WORD COUNT

Pursuant to Indiana Rule of Appellate Procedure 44(F), I verify that this Brief of Amici Curiae, which contains 4,029 words, complies with Indiana Rule of Appellate Procedure 44(E) in that it contains no more than 4,200 words.

Dated: July 1, 2024

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CERTIFICATE OF SERVICE

I certify that on July 1, 2024, the foregoing Brief of Amici Curiae was electronically filed using the Indiana E-Filing System ("IEFS"). I also certify that on July 1, 2024, the foregoing was served via IEFS upon:

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