

No. 12-17

IN THE
SUPREME COURT OF THE UNITED STATES

MARK J. MCBURNEY and ROGER W. HURLBERT,
Petitioners,

v.

NATHANIEL YOUNG, JR., Deputy Commissioner and
Director, Division of Child Support Enforcement,
Commonwealth of Virginia and THOMAS C. LITTLE,
Director, Real Estate Assessment Division, Henrico
County, Commonwealth of Virginia,
Respondents.

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

BRIEF OF *AMICUS CURIAE*
AMERICAN SOCIETY OF NEWS EDITORS,
ARS TECHNICA, AUTOMATTIC, CENTER FOR
INVESTIGATIVE REPORTING, DAILY KOS, GRIST,
MATTHEW LEE, MUCKROCK, TECHDIRT, AND
TUMBLR IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI*

Amici include the American Society of News Editors, *Ars Technica*, Automattic, the Center for Investigative Reporting, *Daily Kos*, *Grist*, Matthew Lee of *Inner City News*, MuckRock, *Techdirt*, and Tumblr. They are bound by a common interest: journalists rely on federal and state FOIA requests to produce and share investigative stories concerning local and national news, but citizens-only restrictions in numerous state FOIA laws, including Virginia's, impose a burden on their ability to do so.¹

The American Society of News Editors (“ASNE”) is an organization that includes directing editors of daily newspapers throughout the Americas, and currently has some 500 members. ASNE changed its name in April 2009 to American Society of News Editors and

¹ Pursuant to Rule 37.2 of the Rules of this Court, letters of consent to the filing of this brief have been submitted to the Court. Counsel of Record for Petitioners received 10 days' notice and consented to the filing, while Counsel of Record for Respondents received 5 days' notice, waived their right to 10 day notice under the rules, and thereby consented to the filing. Pursuant to Rule 37.6 of the Rules of this Court, counsel for the *amici* state that no counsel for either party to this matter authored the brief in whole or in part. Further, no persons or entities, other than the *amici* and their counsel, contributed monetarily to the preparation or submission of this brief.

approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as the American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers. ASNE is a private, non-stock corporation that has no parent.

Ars Technica is an online publication with millions of readers nationwide and offices in San Francisco, Chicago, and New York. *Ars* provides readers with in-depth news and policy analysis about technology.

Automattic is a privately held for-profit technology company based in San Francisco. Founded in 2005, Automattic develops and maintains numerous Internet products, including WordPress.com, an online hosting and publishing platform that powers over 70 million individual blogs in addition to several major news websites and some of the Web's most highly trafficked sites.

The Center for Investigative Reporting is a California-based non-profit investigative news organization. Founded in 1977, the Center produces multimedia reporting that enables the public to demand accountability from government, corporations and others in power. Among its many projects are *The Bay Citizen*

and *California Watch*, both of which provide in-depth investigative reporting to Californians and the rest of the country.

Daily Kos is an online, progressive political community and news organization with over 300,000 registered users. The users can post their own stories and comments, which are a source of news and political analysis for millions of Americans.

Grist is a non-profit, online publication that serves 1.5 million readers each month with news, investigative reporting, and commentary about the environment and sustainability issues. Founded in 1999, *Grist* is based in Seattle and has a staff of 25, with journalists in Washington, California, New York, and Washington, D.C.

Matthew Lee is a journalist residing in New York who routinely files Freedom of Information requests at the local, state, national, and international/United Nations level for *Inner City Press (ICP)*, which he founded. Delaware's denial of his FOIA request regarding a state settlement resulted in *Lee v. Minner*, 458 F.3d 194 (3d Cir. 2006), cited above in the Table of Authorities. The remaining citizens-only FOIA provisions, such as those in Virginia and Arkansas, impede the ability of Lee and *ICP* to cover fair banking and other issues in those states.

MuckRock is an online open-government tool that helps members of the public and press file

federal and state FOIA requests on issues of importance to those individuals. Created by journalists and entrepreneurs, MuckRock has filed over 1,000 requests for public records, 331 of which have been successfully completed. Both Virginia and Arkansas have denied Freedom of Information requests filed through MuckRock because of their citizens-only provisions.

Techdirt is a group blog that serves hundreds of thousands of monthly readers. Techdirt provides analysis on government policy and technology, and has received widespread recognition for its coverage of proposed copyright legislation in 2012.

Tumblr is a privately held technology company, founded in 2007 and based in New York. Tumblr develops and provides tools for creators, including its blogging and social sharing platform that hosts over 70 million blogs and reaches an audience of over 140 million people each month.

SUMMARY OF ARGUMENT

Journalists often rely on multiple state FOIA requests to break national investigative stories, to ensure the factual accuracy of national reporting, and to provide deeper analysis of national data trends for readers across the country. Yet up to eight state FOIA statutes have “citizens-only provisions” that limit access only to the state’s own residents.

Whether these citizens-only provisions are constitutional is an important question only this Court can resolve. The Third and Fourth Circuits are split on their constitutionality, with Delaware’s provision being held to violate the Privileges and Immunities Clause in the Third Circuit, while the Fourth Circuit upheld Virginia’s provision. Meanwhile, the Sixth Circuit is hearing another challenge to a similar citizens-only provision. In light of the ongoing legal uncertainty, these restrictions continue to impose burdens on traditional and online journalists who are investigating news of national significance.

Only Virginia’s citizens-only provision offers an exemption for *some* media organizations. But the partial exemption merely increases the confusion faced by other journalists—including those who do not represent traditional newspapers, print magazines, or FCC licensed broadcast stations. Therefore, Virginia’s exemption increases the risk of discrimination against the many journalists not covered by it.

Because this legal uncertainty hangs over journalists seeking records in many different states, it will continue to burden investigative reporting until this Court resolves it. The Court should take this opportunity to clarify the state of the law and find citizens-only provisions unconstitutional.

ARGUMENT

I. THE COURT'S GUIDANCE IS NEEDED ON THE CONSTITUTIONALITY OF CITIZENS-ONLY PROVISIONS OF STATE FOIA LAWS.

Journalists rely on state FOIA requests to break news stories of national significance. Yet journalists continue to face substantial legal uncertainty regarding citizens-only provisions in several state FOIA statutes.

A. *Journalists Often Rely on State FOIA Requests to Gather and Analyze National News for Citizens in Every State.*

Journalists often rely on state FOIA requests to break national news.

First, some state records are of national import. Virginia is a large, economically significant state that is home to Fortune 500 companies, major banks, military contractors, and celebrated universities. Stories concerning many of these institutions would have national significance. Moreover, state records gain national significance when a former state official campaigns for national office. State records of former governors, such as Arkansas Bill

Clinton and Mike Huckabee, took on national significance when those individuals ran for President of the United States.

Second, FOIA requests to multiple states can shed light on interstate issues. State FOIA requests may inform coverage of cross-border water disputes, national migrant labor issues, and interstate industrial siting incentives. Additionally, many regulatory frameworks rest on *federal* policy (and subsidies) coupled with *state* implementation. For example, journalists will likely file multiple state FOIA requests across the nation to investigate implementation of the recent federal healthcare law. Similarly, journalists will likely file multiple state FOIA requests to determine how local law enforcement agencies deploy new technologies—from surveillance drones to facial recognition tools.

Indeed, journalists at *Ars Technica*, an *amicus*, have been pursuing an investigative report to better understand how law enforcement agencies around the country use license plate readers, tools that photograph license plates and match them against databases to detect expired registrations and more serious infractions.² Even though the federal government encourages the adoption of such technology largely through grants funded by the Drug Enforcement Agency to state and local law enforcement, *Ars* reporters

² Charlotte Albright, *License Plate Readers Spark Privacy Concerns*, NPR.ORG, July 26, 2012.

had to file FOIA requests in many states to understand how those states actually use the technology—how long they store photographed licenses and with whom they share the information.³

The Virginia statute at issue in this case has already had an impact on the ability of researchers to access pertinent information of this nature. Earlier this year a MuckRock representative filed a request with the Virginia State Police for documents relating to the department’s use of aerial surveillance drones; the request was denied due to the requester’s out-of-state residency.⁴ A subsequent request made by a Virginia citizen for similar documents was processed without issue.⁵ With domestic use of aerial drones becoming a matter of national importance,⁶ citizens-only provisions like Virginia’s result in a tangible harm by restricting the dissemination of this newsworthy information to the public.

³ G.W. Schulz, *DEA Installs License-Plate Recognition Devices Near Southwest Border*, ARS TECHNICA, July 11 2012.

⁴ Virginia State Police Drone Documents | Muckrock, <https://www.muckrock.com/foi/virginia-128/Virginia-state-police-drone-documents-1491/> (last visited Aug. 26, 2012).

⁵ Virginia State Police Drone Documents | Muckrock, <https://www.muckrock.com/foi/virginia-128/Virginia-state-police-drone-documents-1661/> (last visited Aug. 26, 2012).

⁶ Jason Koebler, *Police to Use Drones for Spying on Citizens*, U.S. NEWS, Aug. 23, 2012.

Transparency mechanisms like state FOIA laws have a beneficial impact on journalism and the general public. They make the job of reporting relevant information to citizens easier and less costly, “improving the general health of local media systems and the vitality of reporting.”⁷ Although citizens have easier access to government records through these laws, journalists continue to play a crucial role in that they “prod, question, and verify” this information and deliver it to the public in an accessible manner.⁸

But because of citizens-only provisions, any journalist must piece together a *national* investigative story without access to all of the necessary *state* pieces. By definition, journalists cannot be residents of all the states from which they request information in pursuing a national story. In several states, such as Arkansas, Missouri, New Jersey, Tennessee, and Virginia, non-citizens are denied the same right to obtain records that is enjoyed by citizens of those states.

Even though most states lack citizens-only limitations, journalists generally need *all* the pieces, or at least specific pieces, to make sense of a puzzle for their readers. These states’

⁷ STEVEN WALDMAN, WORKING GROUP ON INFORMATION NEEDS OF COMMUNITIES, FED. COMM. COMM’N., THE INFORMATION NEEDS OF COMMUNITIES 20 (2011).

⁸ *Id.*

citizens-only provisions frustrate such investigations, imposing additional costs on all journalists who attempt to pursue those stories.

B. *Journalists Face Conflicting Circuit Court Precedent and Ongoing Litigation.*

Citizens-only provisions are subject to conflicting and uncertain circuit authority. At least eight state statutes impose citizens-only provisions on state FOIA requests.⁹ Of these eight, one state's provision has been declared unconstitutional by a circuit court (Delaware's in the Third Circuit). One is currently the subject of a constitutional challenge before another circuit court (Tennessee's in the Sixth Circuit). Another was upheld in the decision below (Virginia's in the Fourth Circuit).

Notably, every one of the states that enforces its citizens-only provision also rejects access for out-of-state journalists, burdening all journalists across the nation.¹⁰ Of these states, none of them

⁹ Alabama - ALA. CODE § 36-12-40 (2012); Arkansas - ARK. CODE ANN. § 25-19-105 (West 2012); Delaware - DEL. CODE ANN. tit. 29, §10003 (2012); Missouri - MO. ANN. STAT. § 109.180 (West 2012); New Hampshire - N.H. REV. STAT. ANN. § 91-A:4 (2012); New Jersey - N.J. STAT. ANN. §47:1A-1 (West 2012); Tennessee - TENN. CODE ANN. § 10-7-503 (West 2012); Virginia - VA. CODE ANN. § 2.2-3704(A) (West 2012). Earlier this year, Georgia amended its statute to remove the citizens-only provision. GA. CODE ANN. §50-18-71(a) (West 2012).

¹⁰ Meanwhile, one of the eight states interprets its statute to permit out-of-state requests as a matter of
(footnote continued...)

provides a specific exemption for out-of-state journalists except for a *partial* exemption in Virginia, discussed below in Part II.

As a result of these divergent holdings in two circuits, ongoing litigation in a third, and the lack of meaningful exemptions for media outlets, investigative journalists face different interpretations of the federal Constitution in different regions of the country and open-ended legal ambiguity in other regions. No institution other than this Court can resolve this uncertainty and conflict.

C. The Fourth Circuit's Attempt in the Decision Below to Distinguish Conflicting Third Circuit Precedent Fails and Provides No Guidance to Journalists.

In the decision below, the Fourth Circuit failed to distinguish its holding from the Third Circuit's conflicting holding in *Lee v. Minner*.¹¹ It therefore provided journalists no meaningful legal guidance on when a citizens-only law is unconstitutional—other than the happenstance of whichever circuit governs a particular state.

The Fourth Circuit upheld the Virginia

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policy (Alabama). Op. Att'y Gen. Ala. No. 2001-107 (Mar. 1, 2001). Another state, with nearly identical statutory language, has not provided journalists the benefit of a policy clarification (New Hampshire).

¹¹ 458 F.3d 194 (3d Cir. 2006).

FOIA's citizens-only provision, rejecting a challenge based on the Privileges and Immunities Clause and the Interstate Commerce Clause. Previously, in *Lee*, the Third Circuit held that Delaware's nearly identical citizens-only provision violated the Privileges and Immunities Clause because access to news and political information is basic to the "liveliness of the nation as a single entity."¹²

The Fourth Circuit refused to follow the Third Circuit's reasoning for two reasons. First, the Fourth Circuit admitted the circuit split and dismissed the Third Circuit's holding altogether: "as out-of-circuit authority, [*Lee*] is not binding on this Court."¹³

Second, the Fourth Circuit concluded that *Lee* is "materially distinguishable from the situation presented by the Appellants" because the "right identified in *Lee*—'to engage in the political process with regard to matters of both national political and economic importance,'— is not the same right the Appellants advance."¹⁴ *Lee* concerned an author-activist, Matthew Lee, who wrote for a blog he founded called *Inner City Press*.¹⁵ Lee sought documents related to a

¹² 458 F.3d at 200-01 (internal citation omitted).

¹³ *McBurney v. Young*, 667 F.3d 454, 465 (4th Cir. 2012).

¹⁴ *Id.* (internal citation omitted).

¹⁵ Maria Aspan, *As Blogs Proliferate, a Gadfly With Accreditation at the U.N.*, N.Y. TIMES, Apr. 30, 2007.

planned settlement between the State of Delaware and a financial services company.¹⁶ According to the Fourth Circuit, the Petitioners here asserted a different right—one of “personal import” and a “generalized right of access,”¹⁷ rather than seeking “information to advance the interests of *other citizens or the nation as a whole*, or that is of political or economic importance.”¹⁸ That is, according to the Fourth Circuit, the Petitioners’ motivation was different from—and essentially more self-serving than—Matthew Lee’s.

Distinguishing the cases based on the out-of-state filers’ motivation provides no guidance to journalists. First, the Fourth Circuit makes a distinction without a difference. Journalists’ motivations are often simultaneously selfless and self-serving. A free market system such as ours assumes that individuals generally follow their own personal interests, and adopts laws based on that assumption.¹⁹ Journalists have some “personal import” in every state FOIA request they file whether in their home state or elsewhere. Their salaries or income from direct sales, advertising, charitable contributions, or

¹⁶ Lee, 458 F.3d at 194-95.

¹⁷ *McBurney*, 667 F.3d. at 465-66.

¹⁸ *Id.* at 465 (emphasis added).

¹⁹ ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 16 (Edwin Cannan, ed., Methuen 1904) (1776).

grants depend partly on the request. Of course, at the same time, journalists' requests *also* generally "advance the interests of other citizens or the nation as a whole," including the interests of their readers and other citizens benefiting from the requests.

Conversely, in the case below, though not journalists, Petitioners filed VFOIA requests at least partly to advance the interests of *other citizens* in addition to their own. The other citizens benefited include Hurlbert's real estate clients seeking assessments and McBurney's children who rely on child support payments. Perhaps because of these overlapping motivations, residents who live in Virginia (and other citizens-only states) can file state FOIA requests based purely on "personal import" without claiming to advance the interests of others.

Moreover, not only is this distinction confused conceptually, it invites discrimination in its practical application. Even if a state official could determine that some FOIA filings had sufficiently minimal personal benefit (or sufficiently important other-regarding benefits), resting the constitutionality of citizens-only exclusions on a litigant's motivation can only lead to legal confusion and potential discrimination. States cannot practically divine the motivations of requesters. Requesters would downplay the personal import of their requests, so states would in turn speculate about the unstated, personally interested motivations for

at least some requests.

As a result of these conceptual and practical failures, the distinctions only serve to highlight the irreconcilable conflict between the two circuits. Indeed, the purported distinctions do not successfully distinguish the opposed holdings and therefore provide little legal guidance to journalists and other litigants seeking state records.

II. VIRGINIA'S EXEMPTION FOR *SOME* OUT-OF-STATE JOURNALISTS COMPOUNDS THE HARM BY INVITING DISCRIMINATION AGAINST *OTHER* JOURNALISTS.

The Virginia legislature, perhaps recognizing the burden on journalism posed by the VFOIA citizens-only provision, specifically exempted non-citizens who are:

representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth.²⁰

This partial media exemption does not cover journalists working at several of the *amici* organizations—even though these journalists investigate stories of importance to Virginians and serve thousands of readers in the state.

²⁰ VA. CODE ANN. § 2.2-3704(A).

Indeed, the partial exemption provides additional legal confusion and the potential for discrimination against these journalists.

Many of the *amici* organizations are not clearly covered by the exemption. State and municipal agencies in Virginia could plausibly argue several of *amici's* journalists are not representatives of “newspapers,” “magazines,” or “broadcast stations.” *Ars Technica*, *Daily Kos*, *Grist*, and *Techdirt*, for example, are not broadcast licensees and do not print newspapers or magazines. Rather, they provide news, collectively to millions, through websites, mobile and tablet apps, and the sales of specific long-form articles.²¹

Indeed, like these *amici*, many prominent news organizations now print or broadcast nothing. Some traditional outlets, such as the *Seattle Post-Intelligencer*, have stopped printing a physical newspaper. Others still print newspapers in their home regions, while merely relying on online “circulation” in Virginia. Still, other, more recently founded outlets have never published in print or broadcast. At least three of them have reporters in the White House press pool: *Talking Points Memo* (which began as the

²¹ App Store – The Daily Caller, <http://itunes.apple.com/us/app/the-daily-caller/id381099982?mt=8> (last visited Aug. 1, 2012); About Us | Ars Technica, <http://arstechnica.com/about-us/> (last visited July 29, 2012).

personal blog of Josh Micah Marshall and now employs several full-time journalists), the *Huffington Post* (which employs journalists in several cities and has won a Pulitzer Prize in National Reporting for a ten-part series on the post-war lives of wounded American soldiers and their families), and the *Daily Caller* (which also employs full-time journalists and breaks news).²² *ProPublica*, another online-only publication, won a 2011 Pulitzer Prize for National Reporting and a 2010 Pulitzer Prize for Investigative Reporting.²³ These sources attract millions of readers daily.²⁴ Yet even smaller operations reach millions of readers; *Techdirt* has six full-time staff and reaches 1.5 to 2 million readers online every month.²⁵

Even if Virginia agencies interpret the media exemption expansively to cover online news

²² Keach Hagey, *Huffington Post, Politico Win Pulitzer Prizes*, WALL ST. J., Apr. 16, 2012.

²³ About Us – ProPublica, <http://www.propublica.org/about> (last visited July 29, 2012).

²⁴ Press Release, Talking Points Memo, Talking Points Memo Audience up 79% in March; Readers Driving Growth with Social Media and Sharing (Apr. 5, 2010); Adam Clark Estes, *The Huffington Post Passes The New York Times in Traffic*, THE ATLANTIC WIRE, June 9, 2011; About Us | The Daily Caller, <http://www.dailycaller.com/footer/about-us/> (last visited July 29, 2012).

²⁵ About Techdirt, <http://www.techdirt.com/about.php> (last visited July 29, 2012).

outlets and to include online circulation in the state, this reading would invite considerable discrimination and has no clear logical boundaries. A Virginia official would have to determine whether *Daily Kos*, *Grist*, *Ars Technica*, or *Techdirt* qualify as “newspapers” or “magazines” under the statute. At the same time, an official would have to determine whether an independent researcher with a blog and Twitter “microblog” fits within the statutory language as a “representative” of a “newspaper” or “magazine”—even if that individual is a well-known cybersecurity researcher who frequently files federal and state FOIA requests regarding online surveillance.²⁶ Finally, the official would have to determine whether an out-of-state resident who signed up for a blog using Automattic’s WordPress.com offerings—or signed up to be a blogger in the *Daily Kos* community—the day before filing the Virginia FOIA request qualifies for the media exemption. Unless Virginia decides that *anyone* with a blog using Automattic’s offerings or microblog using Twitter or Tumblr by default qualifies for the media exemption (thus swallowing the citizens-only rule), a state official must make substantive

²⁶ Chris Soghoian is an independent researcher whose extensive FOIA work revealing security exploits has been well documented. See Mike Kessler, *The Pest Who Shames Companies Into Fixing Security Flaws*, WIRED, Nov. 23, 2011. Soghoian only maintains a blog and a Twitter account; both have large followings.

determinations regarding which online publications, if any, qualify for the exemption. Such decisions would invite discrimination and provide little certainty.

Indeed, the recent democratization of the press poses the deepest problems for Virginia's partial media exemption. Any non-citizen could be an out-of-state journalist. Thanks to technological innovations over the past two decades, critics no longer complain that freedom of the press belongs only to those who own one.²⁷ The barriers to entry for disseminating news have decreased and the "minimum scale" for a news business can be little more than *one person*, like Matthew Lee, deeply devoted to a cause. As the FCC declared, these citizen journalists are as necessary as professional ones, calling the "either or" choice between the two a false dichotomy in today's world of journalism.²⁸

Two decades ago, the average American could reach large audiences only by handing out pamphlets, posting lawn signs, and (with luck) publishing a letter to the editor in one-newspaper towns. Reaching *national* audiences was even more unlikely. That changed with the initial dial-up Internet technologies in the 1970s and, more significantly, the diffusion of the World Wide Web in the 1990s. As early as 1997,

²⁷ A.J. Liebling, *Do You Belong in Journalism?*, THE NEW YORKER, May 14, 1960, at 105.

²⁸ WALDMAN, *supra* note 4, at 30.

writing about dial-up Internet, this Court recognized that “any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox.”²⁹

Since then, the power of average Americans to communicate has continued to evolve and increase. Many Americans have upgraded from slower dial-up connections to far faster, always-on connections, such as wireline and mobile broadband technologies.³⁰ These technologies connect Americans to everything available on the Internet—and far more businesses and just about every traditional (and non-traditional) journalistic organization around the world now has an Internet presence.

New software has made it even easier for the average American to become a citizen-journalist.³¹ Software developers have created tools that make it easy for anyone, working from anywhere, to create and disseminate journalism. Software tools produced by Blogger, Automattic, and Tumblr power the blogs of individuals, think tanks, and political movements; they even underlie the sites of large news organizations

²⁹ *Reno v. ACLU*, 521 U.S. 844, 870 (1997).

³⁰ JOHN B. HARRIGAN, FED. COMM. COMM’N., BROADBAND ADOPTION AND USE IN AMERICA 13-15 (2010).

³¹ WALDMAN, *supra* note 4, at 15.

and many of the most popular sites online.³²

As a result of these technological and social developments, today, more Americans get most of their news through the Internet than through print newspapers or broadcast radio.³³ While traditional news sources have large readerships online, younger online news organizations and individual bloggers also provide news to Americans in every state throughout the nation.

These trends show no signs of abating. Next generation networks, such as the Google Fiber project in Kansas City, Missouri, provide speeds at least 100 times faster than the connections available to those living in Washington, D.C. or New York City.³⁴ Such high-speed connections will lead to innovative applications, content, and social practices that take advantage of these incredibly fast speeds—just as the past decade’s transition from dial-up to always-on, fast connections gave birth to everything from Facebook to the NPR News app to the Tumblr-based site behind the Occupy Movement called “We are the 99%.”

³² Frederic Lardinois, *Study: Half Of The Top 100 Blogs Now Use WordPress*, TECHCRUNCH, Apr. 11, 2012.

³³ PEW RESEARCH CENTER FOR THE PEOPLE & THE PRESS, INTERNET GAINS ON TELEVISION AS PUBLIC’S MAIN NEWS SOURCE (2011).

³⁴ Carey Gilliam & Yinka Adegoke, *Google Unveils Ultrafast Internet/TV in Kansas City*, REUTERS, July 27, 2012.

Despite these new technologies, human agency remains central to good journalism. Individual and institutional journalists still need to uncover, piece together, and confirm news stories involving the public and private institutions that affect readers' lives. To accomplish this, they may need to rely on state FOIA requests—but they cannot do so in several states, including Virginia's, if they do not fall within the partial exemption.

As a result, the Virginia statute upheld by the Fourth Circuit imposes significant burdens on today's national investigative reporters, independent researchers, and citizen-journalists. For these diverse journalists, the burdens are perhaps equal to those imposed by other citizens-only provisions lacking even the partial media exemption found in Virginia's statute.³⁵

³⁵ The Fourth Circuit made no attempt to address arguments raised by *amici* large media organizations in that case, partly because those organizations actually were newspapers, magazines, or broadcast stations apparently subject to the media exception. *McBurney*, 667 F.3d at 461 n.1.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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