14-1688-cv

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SYED FARHAJ HASSAN, THE COUNCIL OF IMAMS IN NEW JERSEY,MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., ALL BODY SHOP INSIDE & OUTSIDE, UNITY BEEF SAUSAGE COMPANY,MUSLIM FOUNDATION INC.,MOIZ MOHAMMED, JANE DOE, SOOFIA TAHIR, ZAIMAH ABDUR-RAHIM, AND ABDULHAKIM ABDULLAH, *Appellants,*
—against—
THE CITY OF NEW YORK, *Appellee*.

On appeal from the United States District Court for the District of New Jersey, No. 2:12-CV-3401 before the Honorable William J. Martini

BRIEF AMICUS CURIAE OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND NORTH JERSEY MEDIA GROUP INC. IN SUPPORT OF APPELLANTS

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July 10, 2014

CORPORATE DISCLOSURE STATEMENT

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

North Jersey Media Group Inc. is a privately held company owned solely by Macromedia Incorporated, also a privately held company.

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970.

North Jersey Media Group Inc. ("NJMG") is an independent, family-owned printing and publishing company, parent of two daily newspapers serving the residents of northern New Jersey: *The Record* (Bergen County), the state's second-largest newspaper, and the *Herald News* (Passaic County). NJMG also publishes more than 40 community newspapers serving towns across five counties and a family of glossy magazines, including (201) Magazine, Bergen County's premiere magazine. All of the newspapers contribute breaking news, features, columns and local information to NorthJersey.com. The company also owns and publishes Bergen.com showcasing the people, places and events of Bergen County.

SUMMARY OF THE ARGUMENT

Since this country's founding, the news media has served as a watchdog of democracy.[1] The Associated Press fulfilled this role when it wrote a series of articles exposing the New York City Police Department's practice of conducting systematic, undercover surveillance of Muslims regardless of whether there was evidence that the targets may have committed a crime. These articles, for which the Associated Press won the Pulitzer Prize for Investigative Reporting in 2012, led to probing scrutiny of the government program and to the legal action at hand.

A group of persons claiming to be subject to these surveillance practices has sued the City of New York for violation of their constitutional rights. In ruling on the City's motion to dismiss, the District Court has done a remarkable thing: it has held as a matter of the law that the prize-winning journalists who uncovered this program, not the city officials who designed it and carried it out, are responsible for the claimed injuries, thus depriving the plaintiffs of standing to bring their lawsuit to redress the alleged government wrongs.

[1] Pursuant to Rule 29(C)(5), *amici* attest that no counsel for any party authored this brief in whole or in part, and that no counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. Additionally, *amici* attest that they received consent to file this brief from counsel for both sides.

The decision of the District Court is erroneous. Well-established Supreme Court precedent shows that the injury required for Article III standing occurs when the government invades a legally protected interest, not when a plaintiff learns of the invasion. In holding that the government officials who engaged in the spying as alleged in the complaint did not cause harm because the Associated Press broke the news of the surveillance and made the program publicly known, the District Court reached a conclusion that is legally incorrect and, unless overturned, will potentially have far-reaching consequences.

The District Court's ruling wrongly takes aim at the messenger. In equating the journalism in this case with the cause of the asserted injury, the court also ignores the important impact investigative reporting has historically had on government accountability. From the muckrakers of the early 1900s to the Watergate reporters of the 1970s to the broad range of watchdog journalism practiced today, investigative reporters have played a crucial role in informing the public about the conduct of government and in sparking reform where necessary. The Associated Press's reporting on New York City's surveillance of Muslim communities fits squarely into this tradition. The journalists in this case revealed the alleged injuries. They did not cause them.

Under the District Court's ruling, whenever journalists uncover potential infringements on civil liberties relating to government programs and become, in the District Court's view, the "cause" of an alleged harm, plaintiffs in any putative impact litigation would be unable to sue to vindicate claimed violation of their rights. There is no limiting principle to the District Court's holding. Its standard would presumably reach beyond journalists to include anyone who exposed surveillance activities. For example, a bystander who points out a hidden camera in a subway or an airport or near a government building would apparently be the cause of any civil rights harms associated with these activities. Using the publicity generated by investigative journalism to curtail the standing of civil rights plaintiffs deals a deadly double-blow to government accountability.

ARGUMENT

I. The District Court's holding that news reporting is an "independent action" breaking the chain of causation is legally erroneous and could eviscerate much civil rights litigation.

In finding that the Associated Press, rather than the City of New York, is the cause of plaintiffs' alleged harm, the District Court ignored longstanding authority recognizing that the injury required for Article III standing occurs when a "legally protected interest" is invaded, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), and not when a plaintiff

learns of the invasion. Media *amici* write not to take sides on the merits of the Rule 12 motion but to explain that news reports about government action do not defeat the chain of causation. The officials who operate an allegedly injurious program are the ones who cause the claimed harm.

To establish the causation necessary for Article III standing, a plaintiff must show there is a "causal connection between the injury [suffered] and the conduct complained of." *Id.* (internal quotations omitted) (alterations in original). The injury "has to be fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." *Id.* The causation requirement thus ensures that a "sufficient nexus" exists between a plaintiff's "injury and the government action which she attacks to justify judicial intervention." *Linda R.S. v. Richard D.*, 410 U.S. 614, 617-18 (1973).

The District Court misapplied these principles in ruling that, due to the impact of the Associated Press's investigation, the plaintiffs failed to demonstrate causation. It concluded that the plaintiffs' alleged injuries flowed from the Associated Press's reporting and not from the City's surveillance, claiming that "[n]one of the Plaintiff's injuries arose until after the Associated Press released unredacted, confidential NYPD documents and articles expressing its own interpretation of those documents." *See*

Hassan v. City of N.Y., CIV. 2:12-3401 WJM, 2014 WL 654604 at *4 (D.N.J. Feb. 20, 2014).

However, case law and common sense do not support this analysis. In reaching its aberrational holding, the District Court ignored that the United States Supreme Court has recognized that the entity that acts in an illegal manner is the legal cause of the injury. It also ignored recent NSA surveillance cases that found that news reporting on an injury is not an "independent action of … [a] third party" that defeats standing. The District Court's incorrect analysis creates a loophole in the law in which a government program whose constitutionality is questioned in a lawsuit is immunized from scrutiny if the program was disclosed through acts of investigative reporting.

A. Supreme Court precedent shows that when the government or a private entity acts in an illegal manner, it causes the injury required for Article III standing.

Numerous Supreme Court decisions hold that the injury required for Article III standing occurs when a legally protected interest is invaded, and not when a plaintiff learns of the invasion. In *Meese v. Keene*, 481 U.S. 465 (1987), the Court held that a California state senator had standing to bring a First Amendment claim against the government after it labeled films he wanted to exhibit as "political propaganda" under the Foreign Agents

Registration Act. Regarding causation, the Court explained that "[b]ecause the alleged injury stems from the Department of Justice's enforcement of a statute that employs the term 'political propaganda,' we conclude that the risk of injury to appellee's reputation 'fairly can be traced' to the defendant's conduct." *Id.* at 476. Thus, under *Meese*, the injury occurred and causation existed as soon as the government invaded a legally protected interest by enforcing the statute. From whom the plaintiff learned of the statute's enforcement was immaterial to the Court's causation analysis.

Additional Supreme Court cases confirm that injury occurs when a legally protected interest is invaded. For example, in *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003) (internal quotation omitted), the Court held that, in equal protection cases, injury occurs when there is a "'denial of equal treatment resulting from the imposition of the barrier'" and not when the plaintiff learns of the imposition of the barrier. *See also Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205 (1972) (ruling that the plaintiffs' alleged injury occurred when their apartment complex owner excluded minority persons from the complex, causing them to lose their right under the Civil Rights Act of 1968 to receive "important benefits from interracial associations"); *Duke Power Co. v. Carolina Envtl. Study Group*, 438 U.S. 59, 73-74 (1978) (stating that the plaintiffs were injured, and obtained the standing to

challenge an act of Congress that encouraged the proliferation of nuclear power plants, after nuclear power plants in their area emitted "non-natural radiation.")

Moreover, in *Bennett v. Spear*, 520 U.S. 154 (1997), the Supreme Court cautioned against misinterpreting, as the District Court did here, an innocuous final step in the chain of causation as the cause of the plaintiff's injury. The Court wrote, "[It is wrong to equate] injury 'fairly traceable' to the defendant with injury as to which the defendant's actions are the very last step in the chain of causation." *Id.* at 168. This kind of analytical error is particularly disconcerting in a case such as this one, where one of the country's leading news organizations earned one of the country's top journalism prizes for exposing the activities of a unit in the New York City Police Department that subsequently was subject to intense public examination. *See AP wins Pulitzer Prize for Investigative Reporting on NYPD surveillance*, April 16, 2012, http://bit.ly/. To hold that the truthful reporting of the Associated Press is the cause of the plaintiffs' complained-of injuries would, as a matter of law, contradict Supreme Court precedent on Article III standing, and, as a matter of policy, give a free pass to alleged tortfeasors, even governmental actors accused of constitutional rights

violations, if the basis for the claimed wrongdoing is made public by watchdog groups.

B. Recent surveillance cases confirm that news reporting does not break the chain of causation for standing purposes.

Two recent challenges to the National Security Agency's telephone metadata collection program demonstrate that a party has standing to sue regardless of whether the media are the ones who informed the plaintiff about a surveillance program. The cases, *American Civil Liberties Union v. Clapper*, 959 F. Supp. 2d 724 (S.D.N.Y. 2013), and *Klayman v. Obama*, 957 F. Supp. 2d 1 (D.D.C. 2013), arose after Glenn Greenwald, reporting for *The Guardian*, used confidential information provided by former NSA contractor Edward Snowden to reveal, among other things, the existence of a surveillance program designed to collect Americans' telephone metadata. *See Am. Civil Liberties Union*, 959 F. Supp. 2d at 734.

When individuals and advocacy organizations alleged that the surveillance violated their civil rights, neither court seriously entertained the idea that these plaintiffs lacked standing to sue because the news media exposed the programs. Once the plaintiffs demonstrated that the NSA collected and analyzed their telephony metadata (that is, once the plaintiffs showed they suffered a colorable injury under their theory of constitutional harm), the courts had no difficulty dispensing with the causation element.

As the *American Civil Liberties Union* court wrote: "Here, there is no dispute the Government collected telephony metadata related to the ACLU's telephone calls. Thus, the standing requirement is satisfied." *Id.* at 738.

Both courts acknowledged that the plaintiffs had no knowledge of the surveillance program prior to the news media accounts. This fact, however, did not affect their standing analysis – as it should not. *See id.* at 735 ("The ACLU would never have learned about the section 215 order authorizing collection of telephony metadata related to its telephone numbers but for the unauthorized disclosures by Edward Snowden [to Glenn Greenwald]."); *Klayman*, 957 F. Supp. 2d at 11 ("Soon after the first public revelations in the news media [of the intelligence collection and surveillance programs], plaintiffs filed their complaints in these two cases . . . .").

This Court should also find that the news reporting at issue in this case relating to the City's surveillance program does not break the chain of causation and deprive the plaintiffs of the ability to pursue their claims provided they meet all other requirements of Article III standing.[2]

[2] The District Court's opinion is not supported by any precedent in which a news report was found to be "independent action" of a "third party." Instead, the court made an inapposite comparison with *Philadelphia Yearly Meeting of Religious Soc'y of Friends v. Tate*, 519 F.2d 1335 (3d Cir. 1975). *See Hassan*, 2014 WL 654604 at *6-7. In that case, the plaintiffs claimed a program in which members of the Philadelphia Police Department gathered information on groups with divergent political and social views violated

II. Investigative journalism complements the accountability function played by civil-rights litigation.

Central to the District Court's ruling is its erroneous finding that the Associated Press's reporting is the legal cause of the plaintiffs' alleged injuries. From the work of the muckrakers of the early 1900s to the Watergate coverage of the 1970s and the reporting on terrorism policy that dominates today's news, investigative journalism has never been considered the source of any civil liberties injuries that it may reveal. Instead, journalists have taken advantage of First Amendment protections recognized by the courts to play a crucial role in exposing and explaining government conduct to the public. The Associated Press's reporting on the New York City Police Department's surveillance of Muslim communities has continued that tradition – a tradition that far from causing harm actually in many cases rectifies it, for an "informed public opinion is the most potent of all restraints upon misgovernment." *Grosjean v. Am. Press Co.*, 297 U.S.

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their First and Fourteenth Amendment rights. *Philadelphia Yearly Meeting*, 519 F.2d at 1336-37. Even though this Court deemed the underlying surveillance program lawful, it found that officials at the police department caused injuries sufficient for Article III standing when they, with the "absence of a lawful purpose," disclosed the existence of the program and the names of some of the targeted groups and individuals. *Id.* at 1338. *Philadelphia Yearly Meeting* did not even contemplate whether the news media's use of information from the police department could defeat causation. The case merely stands for the proposition that the government can cause injury by disclosing information to the public.

233, 250 (1936). By identifying the Associated Press as responsible for breaking the chain of causation in this case, the District Court has misconstrued the structural position of journalism in promoting and maintaining self-government.

A. The Supreme Court has embraced a whistleblowing role for the free press that has been diminished by the District Court's erroneous ruling.

A primary reason that a free press is essential to democracy is that reporters play a crucial role in informing the electorate. *See, e.g., Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 492 (1975) ("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.") In this way, journalists provide people the knowledge they need to check government officials who may be abusing the power of their office. Vincent Blasi, *The Checking Value in First Amendment Theory*, 2 AM. B. FOUND. RES. J. 531, 537, 539 (1977). ("[O]ne of the principal purposes of freedom of the press is to permit intensive scrutiny of the behavior of public officials.")

Two key press freedom cases – *New York Times v. United States*, 403 U.S. 713 (1971), and *New York Times* v. *Sullivan*, 376 U.S. 254 (1964) – emphasize the media's role as the government's watchdog. In *New York*

Times v. United States, where the Court struck down a prior restraint on publication of classified documents relating to U.S. involvement in Vietnam, Justice Potter Stewart explained in his concurrence that the only effective restraint on government power may be an informed citizenry, of which a free press is a prerequisite. *See New York Times*, 403 U.S. at 728 (Stewart, J., concurring) ("[W]ithout an informed and free press there cannot be an enlightened people.").

In *Sullivan*, the Supreme Court recognized the press's vital structural role in democracy when it found that the First Amendment protects all statements about public officials except those made with actual malice. *See* 376 U.S. at 270 (emphasizing "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open"). The Court stressed how integral freedom of the press is to America's identity: "Those who won our independence believed … that public discussion is a political duty; and that this should be a fundamental principle of the American government.'" *Id.* (internal quotations omitted).

In finding that the Associated Press, which reported on the surveillance – and not the government officials who authorized and conducted it – was the legal cause of the harms the plaintiffs allege, the District Court insinuated that it did not approve of the journalistic tradecraft,

writing that "[t]he Associated Press *covertly obtained* confidential NYPD documents and *published unredacted versions* of these documents, as well as articles interpreting the documents." *Hassan*, 2014 WL 654604 at *2 (emphasis added). The opinion stated that the news organization acted "without authorization." *Id.* at *7.

Judicial disapproval of particular journalistic reporting techniques, if that is what lies behind the District Court's statements, ignores the fact that the Associated Press was playing a constitutionally protected role when it broke stories that led to much public scrutiny and soul-searching over this particular government program. Journalists routinely receive unauthorized news tips from public officials, publish material from secret government reports, and write explanatory and critical articles about public policies carried out in the name of the people. That is the essence of reporting. When a court uses language such as "covertly obtained" and "unauthorized disclosure," it all but turns investigative reporting into a rogue activity and ignores how essential these professional duties are to democratic institutions.

Although the District Court's ruling obviously does not prevent the media from investigating and covering controversial topics, *amici* are concerned that unless the ruling is reversed it will have a harmful effect on

such reporting and create incongruities in the law about the role of the press and the responsibility of government to answer for official policy.

B. Journalists regularly expose government conduct that leads to public debate and reform of public policy.

The response to key pieces of investigative journalism throughout this country's history shows that this kind of reporting often propels government officials to focus on and correct underlying problems uncovered by news organizations.

In the early 1900s, the term "muckraker" was affixed to journalists who exposed political and corporate corruption. For instance, Ida M. Tarbell's *The History of the Standard Oil Company* revealed the predatory pricing practices of Standard Oil and "[i]n many ways . . . informed the government's antitrust case against Standard Oil." Christopher R. Leslie, *Revisiting the Revisionist History of Standard Oil*, 85 S. CAL. L. REV. 573, 575 (2012). Upton Sinclair's *The Jungle* shocked the country with its reporting on the unsanitary practices of America's meatpacking industry and is credited with aiding passage of the Pure Food and Drug Act and Meat Inspection Act. James Diedrick, *The Jungle*, Encyclopedia of Chicago (Janice L. Reiff, Ann Durkin Keating, & James R. Grossman, eds. 2005), http://www.encyclopedia.chicagohistory.org/pages/679.html.

The investigation into Watergate also shows the integral role a free press plays in government accountability. After *Washington Post* reporters Bob Woodward and Carl Bernstein uncovered that Nixon administration officials had broken into and tried to wiretap the Democratic National Committee Headquarters, President Nixon eventually resigned from office. Katharine Graham, *The Watergate Watershed: A Turning Point for a Nation and a Newspaper*, Wash. Post, Jan. 28, 1997, http://wapo.st/1jKFGdA. Though Nixon at first tried to attack and undermine the *Post*'s coverage, the Watergate stories are now seen as one of the country's finest examples of investigative reporting. *Id*. The *Post* won the Pulitzer Prize for Public Service in 1973 for its reporting, and former *New York Times* managing editor Gene Roberts called the coverage "maybe the single greatest reporting effort of all time." International Center for Journalists, Bob Woodward, http://www.icfj.org/bob-woodward (last visited July 2, 2014).

More recently, investigative reporters at *The New York Times* broke the story that the National Security Agency was using an illegal wiretapping scheme to monitor phone calls and e-mail messages involving suspected terrorist operatives without the approval of federal courts. *See* James Risen & Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. Times, Dec. 16, 2005, http://nyti.ms/neIMIB. This reporting, which won the

Pulitzer Prize for National Reporting in 2006, led to multiple civil lawsuits as well as the airing of many divergent views on the topic. *Bush Administration's Warrantless Wiretapping Program*, Wash. Post, Feb. 12, 2008, http://wapo.st/1k7uPus. In 2007, the Bush Administration ended the program and replaced it with surveillance efforts that the Foreign Intelligence Surveillance Court oversees. *Id*.

Reporting over the last year on the NSA surveillance programs disclosed by Snowden, the former NSA contractor, has also led to public debate, litigation in court, and calls for reform. Two advisory committees, the President's Review Group on Intelligence and Communications Technologies and the Privacy and Civil Liberties Oversight Board, issued recommendations for changing some aspects of U.S. surveillance policy. *Report and Recommendations of The President's Review Group on Intelligence and Communications Technologies, Liberty and Security in a Changing World*, Dec. 12, 2013, http://1.usa.gov/1cBct0k; Privacy and Civil Liberties Oversight Board, *Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court*, Jan. 23, 2014, http://bit.ly/1fjSbeJ. In a January speech, President Obama implemented parts

of these suggestions. *Remarks by the President on the Review of Signals Intelligence*, Jan. 17, 2014, http://1.usa.gov/1awEWY8.

The response to these pieces of investigative journalism shows the vital role such reporting plays in protecting the democratic process.

C. The Associated Press fulfilled the role of a free press by writing stories that led to public scrutiny of the Muslim community surveillance program.

The Associated Press's coverage of the NYPD's Muslim surveillance program fits right into the long American tradition of important investigative journalism that leads to public debate and discussion about the use of government power in a democracy. In a series that began in August 2011, the news organization uncovered an extensive program where New York City Police Department officials, with help from the Central Intelligence Agency, monitored the daily lives of Muslims in the New York metropolitan area. Matt Apuzzo & Adam Goldman, *With CIA Help, NYPD Moves Covertly in Muslim Areas*, Associated Press, Aug. 24, 2011, http://bit.ly/VdoIPj. The police department mounted hidden cameras at mosques and sent plain-clothed officials to observe Muslims at these religious institutions, university student association events, restaurants, stores, and other community gathering places. *Id.*; Matt Apuzzo & Adam Goldman, *Inside the Spy Unit That NYPD Says Doesn't Exist*, Associated

Press, Aug. 31, 2011, http://bit.ly/VdqgJg; Matt Apuzzo & Adam Goldman, *Documents: NYPD Gathered Intelligence on 250-Plus Mosques, Student Groups in Terrorist Hunt*, Associated Press, Sept. 6, 2011, http://bit.ly/1qynQ5a.

The Associated Press reported that the police department engaged in this surveillance even if it had no evidence that the targets engaged in any criminal activity. Matt Apuzzo & Adam Goldman, *With CIA Help, NYPD Moves Covertly in Muslim Areas*, Associated Press, Aug. 24, 2011. This practice violated FBI guidelines that the police department claimed that it had followed. *Id.* Through the Associated Press, the public learned that the CIA – which is not allowed to conduct domestic spying – helped create these programs, sent some of its staff members to work with the NYPD, and received surveillance reports from the city. *Id.* The New York City Council and key federal government offices, both of which fund the NYPD, were unaware of the details of the program. *Id.*

The reporting of the Associated Press led to sharp public outcry, and New York City Council officials, university and congressional leaders, and then-Newark Mayor Cory Booker all criticized the surveillance efforts. Joseph Goldstein, *City Council Grills Kelly on Police Surveillance of Muslims*, N.Y. Times, Oct. 6, 2011, http://nyti.ms/1kewTR0; Adam

Goldman & Matt Apuzzo, *With cameras, informants, NYPD eyed mosques*, Associated Press, Feb. 23, 2012, http://bit.ly/TPeUdp. Many officials were specifically concerned that the New York City Police Department did not inform them about this program. Rep. Bill Pascrell, Jr. (D-NJ) said the NYPD should not operate in New Jersey without alerting state and federal officials first. *Id.* Booker called the surveillance "deeply offensive" and said that his police department would not have allowed these clandestine activities if it had been aware of them. *Newark mayor: NYPD spying on Muslims 'offensive,'* Associated Press, Feb. 22, 2012, http://nbcnews.to/1m95oMS.

In August 2011, in response to the Associated Press stories, the C.I.A.'s inspector general began a review of the agency's collaboration with the NYPD. Charlie Savage, *C.I.A. Sees Concerns on Ties to New York Police*, N.Y. Times, June 27, 2013, http://nyti.ms/1xhw0PP. The study revealed that the collaboration contained "irregular personnel practices," lacked "formal documentation in some important instances," and did not provide adequate "direction and control" by supervisors. *Id.*

The Associated Press won the Pulitzer Prize for Investigative Reporting in 2012 for its stories on the surveillance. Tom Curley, who was then President and CEO of the Associated Press, emphasized the important

public service that his reporters had fulfilled: "The AP series has set off a healthy, important and timely debate on what tactics government can or should use to prevent another terrorist attack on the United States." *AP wins Pulitzer Prize for Investigative Reporting on NYPD surveillance*, April 16, 2012, http://bit.ly/1iWaPjv. As Curley summed up, "[T]he public is better off knowing what methods its government is up to in the name of keeping people safe. A vigorous and strong free press is essential to helping inform the debate, especially when civil liberties are at stake." *Id.*

CONCLUSION

Amici respectfully urge this Court to find that the reporting by the Associated Press is not an intervening action by a third-party that negates the standing of appellants if they otherwise meet all of Article III's requirements.

Dated: July 10, 2014
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CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that I am a member in good standing of the Bar of the Court of Appeals for the Third Circuit.

/s/ Bruce D. Brown
Dated: July 10, 2014
Arlington, Virginia

CERTIFICATION OF IDENTICAL COMPLIANCE OF BRIEFS

I hereby certify that the text of the electronic and hard copies of this brief are identical.

/s/ Bruce D. Brown
Dated: July 10, 2014
Arlington, Virginia

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I certify that the electronic file of this brief were scanned with Norton Internet Security antivirus software.

/s/ Bruce D. Brown
Dated: July 10, 2014
Arlington, Virginia

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(d) and 32(a)(7)(B) because the brief (as indicated by word processing program, Microsoft Word) contains 4,427 words, exclusive of the portions excluded by Rule 32(a)(7)(B)(iii). I further certify that this brief complies with the typeface requirements of Rule 32(a)(5) and type style requirements of Rule 32(a)(6) because this brief has been prepared in the proportionally spaced typeface of 14-point Times New Roman.

/s/ Bruce D. Brown
Dated: July 10, 2014
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CERTIFICATE OF SERVICE

I hereby certify that I am filing the foregoing Brief Amicus Curiae via this Court's ECF system and am serving the foregoing Brief Amicus Curiae, via this Court's ECF and by electronic mail, upon counsel of record for Plaintiffs and Defendants.

/s/ Bruce D. Brown
Dated: July 10, 2014
Arlington, Virginia