
IN THE COURT OF APPEALS OF MARYLAND

No. 20
September Term, 2022

BALTIMORE POLICE DEPARTMENT, et al.,
Appellants,

v.

OPEN JUSTICE BALTIMORE,
Appellee.

**BRIEF OF AMICI CURIAE
REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
AND 15 MEDIA ORGANIZATIONS IN SUPPORT OF APPELLEE**

FILED UPON WRITTEN CONSENT OF THE PARTIES

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December 2, 2022

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici are the Reporters Committee for Freedom of the Press, The Baltimore Sun, D.C. Open Government Coalition, First Amendment Coalition, Freedom of the Press Foundation, Investigative Reporting Workshop at American University, The Media Institute, National Freedom of Information Coalition, The National Press Club, National Press Club Journalism Institute, National Press Photographers Association, News/Media Alliance, Radio Television Digital News Association, Society of Environmental Journalists, Society of Professional Journalists, and Tully Center for Free Speech. A supplemental statement of identity and interest of the amici is included below as Appendix A. Public records laws like the Maryland Public Information Act, Maryland Code, General Provisions Article (“GP”), §§ 4-101 *et seq.* (“MPIA”), are frequently relied on by members of the news media to gather information so they may inform the public about how the government is conducting the people’s business. As news media organizations and organizations that defend the First Amendment and newsgathering rights of the press, amici have a strong interest in ensuring that the fee waiver provisions of the MPIA are interpreted and applied in a manner that facilitates public access to government information, and that fee waiver applications for requests made in the public interest are properly protected from arbitrary and capricious denials.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Public access to government records is essential to democracy; it prevents the government from operating in secret and allows the public to oversee the actions of government agencies and officials. In recognition of this principle, the Maryland General Assembly enacted the MPIA, which creates a broad presumption in favor of unimpeded public access to government records. *Kirwan v. Diamondback*, 352 Md. 74, 80, 721 A.2d 196, 199 (1998) (“The Maryland Public Information Act establishes a public policy and a general presumption in favor of disclosure of government or public documents.”); *see also* GP § 4-103(b) (“[The MPIA] shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person . . . that requests the inspection.”). In keeping with this mandate, the MPIA authorizes records custodians to waive any fees associated with fulfilling a public records request when, in view of “the ability of the applicant to pay the fee and other relevant factors,” a “waiver would be in the public interest.” GP § 4-206(e)(2)(ii) (the “Fee Waiver Provision”).

Here, Baltimore Legal Action Team—on behalf of Appellee Open Justice Baltimore (“OJB”)—submitted requests to the Baltimore City Police Department (“BPD”) under the MPIA for access to records of internal investigations of use of force by law enforcement officers, and for records of administrative and civilian

complaints against law enforcement officers, as well as the corresponding internal investigations. *See Open Justice Baltimore v. Baltimore City Police Dept.*, No. 122-2021 at 2–3 (Md. Ct. Spec. App. Feb. 7, 2022) (the “Opinion”). OJB requested fee waivers pursuant to the MPIA’s Fee Waiver Provision. *Id.* at 3. After BPD failed to timely respond to the requests, OJB filed suit in the Circuit Court for Baltimore City to compel disclosure of the requested records. *Id.* at 4.

Thereafter, BPD conceded that a subset of the records were required to be disclosed under the MPIA. *Id.* at 4–6. It agreed to disclose the records but demanded \$1,421,082.50 in prepayment for costs associated with the review, redaction, and reproduction of the files. *Id.* at 6. BPD later reduced its demand for costs to \$245,123.00 after being made aware of a computational error in its earlier cost estimate. *Id.* BPD denied OJB’s fee waiver requests on the grounds that “OJB’s articulated public interest purpose for the records was extremely general and vague,” that OJB did not explain “how disclosure would achieve its purpose,” and that, in BPD’s determination, the “materials sought would not likely contribute significantly to public understanding of the operations” of BPD. *Id.* at 7, 17–18 (internal quotation marks omitted).

On appeal, the Court of Special Appeals concluded that BPD’s denial of OJB’s fee waiver requests was arbitrary and capricious. *Id.* at 22–23. Specifically,

the Court of Special Appeals held that BPD had failed to “meaningfully consider[] the way in which [disclosure] may have aided the public’s understanding of how [BPD] was addressing allegations of police misconduct.” *Id.* (citation and internal quotation marks omitted). BPD seeks reversal of that decision.

Amici urge this Court to affirm and, in so doing, write to emphasize the importance of safeguarding members of the public, including members of the news media, against arbitrary and capricious denials of their requests for fee waivers under the MPIA. Access to public records makes possible powerful reporting that can serve as a catalyst for important public debate and reform. In particular, investigative reporting based on law enforcement records—like those at issue here—can help uncover trends in police misconduct and shed light on law enforcement oversight of misconduct investigations: information that is crucial for informed conversations about criminal justice and criminal justice reform. *See* Section II, *infra*.

In a period when newsrooms are facing increasing financial constraints, news media organizations—and particularly small, local news organizations—may be unable to pay six- or seven-figure fees to obtain access to public records, or to pursue litigation to challenge arbitrary and capricious fee-waiver denials. BPD’s arguments, if accepted, would threaten the ability of members of the news media—

and of civil society organizations like OJB—to pursue access to public records in Maryland and to inform Marylanders about matters of significant public concern. This result runs counter not only to the General Assembly’s intent in enacting the MPIA but also to its stated commitments to transparency and public oversight of law enforcement agencies, as reflected in the recently enacted Maryland Police Accountability Act of 2021, S.B. 0178 (2021).

For the reasons herein, amici respectfully urge the Court to affirm the Court of Special Appeals’ holding that BPD’s denial of OJB’s fee waiver requests was arbitrary and capricious.

ARGUMENT

I. Fee waivers play an important role in ensuring that journalists and other requesters are able to pursue access to government records for the benefit of the public.

Access to government records is critical to ensuring the public is informed about the workings of state and local government. Indeed, journalists in Maryland regularly rely on information in government records obtained under the MPIA to report on matters of the utmost public concern. *See, e.g.,* Darcy Costello, *Hundreds of Baltimore County officers don't have body cameras years after program's start; goal is to reach all 'well before' deadline*, Baltimore Sun (Aug. 26, 2022), <https://perma.cc/6R8W-RY6E> (reporting derived from information obtained via public records requests); Steve Thompson, *Suspected false positives stirred concern about coronavirus tests as Maryland officials pressed to use them*, Wash. Post (May 3, 2021), <https://perma.cc/4DZB-HKCB> (reporting based on public records obtained from the Governor's Office and Maryland public health officials).

Fee waivers for news media and other organizations who seek access to records that will inform the public serve the policy objectives underlying the MPIA. And reducing or eliminating financial barriers to obtaining such records has never been more necessary. Few news outlets can afford to pay tens of thousands of dollars in fees to obtain access to public records for newsgathering purposes—or to pursue

legal action to challenge arbitrary and capricious fee-waiver denials, and the financial ability of news organizations to bear such costs has diminished significantly in the past decade. See Clara Hendrickson, Brookings Inst., *Local Journalism in Crisis: Why America Must Revive Its Local Newsrooms* (2019), <https://perma.cc/8AV8-6W25>. Between 2008 and 2018, newspaper advertising revenue dropped 68 percent. *Id.* at 2. As a result, from January 2017 to April 2018, alone, at least 36 percent of the largest newspapers in the United States laid off staff, including more than half of newspapers with circulations greater than 250,000. Elizabeth Grieco et al., *About a third of large U.S. newspapers have suffered layoffs since 2017*, Pew Research Center (July 23, 2018), <https://perma.cc/Y9ES-DT47>. And, between 2004 and 2019, more than 2,000 weekly and nondaily news outlets shut down completely. Penelope Muse Abernathy, Center for Innovation & Sustainability in Local Media, *News Deserts and Ghost Newspapers: Will Local News Survive?* 11 (2020), <https://perma.cc/4PSK-3QUY>. The 165-year-old Montgomery Sentinel, a local weekly newspaper serving the one million residents of Montgomery County, Maryland, is but one example of a news outlet that was forced to close in 2020 due to declining revenue. *Id.* at 9, 16–17.

In order to survive, news organizations—particularly smaller, local news organizations—must limit costs. As a result, they are less likely to be able to pay

substantial fees to obtain public records, and less likely to undertake costly litigation to challenge improper denials of fee-waiver requests. In a study conducted by the Knight Foundation, nearly two-thirds of news editors, or 65 percent, reported that the news industry's ability to pursue legal actions related to First Amendment issues had weakened over the last decade. Knight Found., *In Defense of the First Amendment* 5 (Apr. 2016), <https://perma.cc/2SJB-BXWD>. Of those news organizations less able to pursue legal actions, 89 percent cited the financial costs. *Id.* at 5, 13 (“The loss of journalist jobs and publishers’ declining profits mean there’s less opportunity to pursue difficult stories and sue for access to information.”). And, as one editor noted: “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.’” *Id.* at 27.

These financial constraints on news outlets only exacerbate the difficulties already faced by journalists seeking access to records of law enforcement misconduct, like those at issue here. For instance, since the General Assembly enacted the Maryland Police Accountability Act of 2021, known as “Anton’s Law,” which removed records of police misconduct investigations from MPIA’s investigatory records exception, many Maryland law enforcement agencies have improperly delayed responding to requests for such records. *See* Miranda S.

Spivack, *Law aimed at more access to police discipline records has not yet lived up to its promise*, Baltimore Brew (Mar. 20, 2022), <https://perma.cc/22AV-7ZDY>; Justin Fenton & Lilly Price, *Anton’s Law promised to make Maryland police disciplinary records public, but in reality transparency has been slow or nonexistent*, Baltimore Sun (Dec. 30, 2021), <https://perma.cc/3NEZ-YDDE>. And many agencies have assessed heavy fees that lock requesters into protracted and resource-intensive disputes. See Miranda S. Spivack, *Getting “bad cop” records still means fee negotiations, court battles and wrangling with agencies and unions*, Baltimore Brew (Mar. 21, 2022), <https://perma.cc/A5U3-MACH> (noting reports of “huge variations in fees . . . from about \$250 per hour for a lawyer to about \$30 per hour for a clerk to review the documents”).

As many newsrooms face substantial budget shortfalls, the prospect of paying unpredictable and—for smaller, local news organizations, in particular—potentially astronomical fees to obtain access to public records hinders their ability to report on matters of vital public concern. Reducing or eliminating financial barriers to obtaining access to public records that are being sought to inform the public serves the policy goals underlying the MPIA, and is essential if the press is to be able to carry out its role as a “surrogate[] for the public” by obtaining and disseminating information necessary for public oversight of government activities. *Richmond*

Newspapers, Inc. v. Virginia, 448 U.S. 555, 573 (1980); *see also Saxbe v. Wash. Post Co.*, 417 U.S. 843, 863 (1974) (Powell, J., dissenting) (“[The press] is the means by which the people receive that free flow of information and ideas essential to intelligent self-government.”).

II. BPD’s arguments are contrary to the legislative purpose of the MPIA and, if accepted, would threaten news reporting on matters of public concern.

When considering records requests made under the MPIA, agency records custodians and reviewing courts must follow “the statutory mandate that the [MPIA] be liberally construed in order to effectuate its broad remedial purpose.” *A.S. Abell Publ’g Co. v. Mezzanote*, 297 Md. 26, 39, 464 A.2d 1068, 1074 (1983). The MPIA’s broad presumption in favor of public access applies to the Fee Waiver Provision, which provides that an agency may grant a request for a fee waiver if, “after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.” GP § 4-206(e); *see also Mayor & City Council of Balt. v. Burke*, 67 Md. App. 147, 156, 506 A.2d 683, 687–688 (1986), *cert. denied*, 306 Md. 118 (1986). In an opinion interpreting the Fee Waiver Provision, the Attorney General noted that “the broad term ‘public interest’ does not permit a precise listing of relevant factors” but examples of such factors may include whether disclosure of the requested records

will shed light on “a public controversy about official actions,” or on “an agency’s performance of its public duties.” *See Action Comm. for Transit, Inc. v. Town of Chevy Chase*, 229 Md. App. 540, 557, 145 A.3d 640, 649–50 (2016) (quoting 81 Op. Att’y Gen. 154, 157–58 (1996)). Although an agency has discretion to deny a fee-waiver request, it cannot do so arbitrarily and capriciously. *Id.* at 559.

Here, as the Court of Special Appeals correctly held, BPD arbitrarily and capriciously denied OJB’s fee-waiver requests, failing to meaningfully “address the public interest factors underlying [OJB’s] repeated . . . requests.” Opinion at 17. In rejecting OJB’s explanation of the public interest, BPD faulted OJB for not explaining how “disclosure [of the records] would achieve its [public interest] purpose.” *Id.* Indeed, in its brief to the Court of Special Appeals, BPD argued that its denial of OJB’s fee-waiver requests was justified, in part, because it did not know if OJB would “use the redacted documents to increase transparency and foster trust by posting them all online with no further explanation, or by providing them in a more searchable format to the media and the public, or by printing them out and using them for a papier-mâché public art project.” Appellees’ Br. at 26.

As an initial matter, it is untenable to expect a requester to provide a detailed explanation of how it will use information it does not yet have that may be contained in public records that it has not yet seen. Indeed, members of the news media

routinely seek access to public records to investigate possible leads for news stories. A news organization cannot know how—or even if—it will report on information in those records until it has reviewed them. Nor could an organization like OJB know in advance whether a news media outlet may later utilize information made publicly available by that organization in its news reporting. Indeed, the format or context in which a requester may use information obtained from public records should not be a defining factor as to whether a fee waiver is in the public interest. Rather, it is “a public purpose” that “justifies the expenditure of public funds to comply with” a fee-waiver request, *Action Comm. for Transit, Inc.*, 229 Md. App. at 556–57 (emphasis added) (quoting Off. of the Att’y Gen., *Maryland Public Information Act Manual* at 7-3 (14th ed. 2015)).

BPD’s remaining arguments are similarly flawed. The agency contends that because the “documents sought would likely be heavily redacted and thus not understandable to the public” they will not “likely contribute significantly to public understanding of the operations and activities of the [BPD]” considering that BPD already posts “the policies and procedures that guide the conduct of all police personnel, as well as information about officer-involved shootings, use of force, and citizen complaints” on its website. Opinion at 17–18 (internal quotation marks omitted). This argument is contrary to the public policy underlying the MPIA and

the recently enacted Anton’s Law. As this Court has recognized, the provisions of the MPIA “reflect the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government.” *Fioretti v. Md. State Bd. of Dental Exam’rs*, 351 Md. 66, 73, 716 A.2d 258, 262 (1998) (quoting *A.S. Abell Publ’g Co.*, 297 Md. at 32). The mere fact that information in responsive records may be redacted, or that an agency may post related information on its website, does not remove a records request from the ambit of those for which a fee waiver may be in the public interest.

To the contrary, as the General Assembly recognized in enacting Anton’s Law, increased public access to records of law enforcement misconduct “inject[s] a measure of trust between the police and the communities they are sworn to protect and serve.” Jacob Steinberg, *Bill could make Maryland police discipline records public*, Associated Press (Feb. 4, 2021), <https://perma.cc/43DE-FPCY> (statement of Del. Gabriel Acevero). And an agency evaluating a fee-waiver request under the MPIA must meaningfully consider whether disclosure of the records will “shed light on a public controversy about official actions”—a factor that is “particularly germane . . . [i]n the wake of the well-documented public controversy surrounding use of force by [Baltimore] City police officers.” Opinion at 22 (citations and internal quotation marks omitted). Thus, with respect to law enforcement in

particular, “the awesome powers exercised by police create a compelling need for public oversight and review of a police department’s internal investigations.” *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 787 N.E.2d 602, 605 (Mass. App. Ct. 2003).

Investigative reporting from Maryland and around the country has shown how information about law enforcement that is gleaned from public records can be used in a variety of ways to inform the public and, in some cases, drive meaningful reform. For example, in Chicago, the Citizens Police Data Project provides access to records of officers investigated in connection with possible misconduct, including those complaints that are not sustained or are determined to be unfounded, and complaints for which an officer was exonerated. *See* Invisible Institute, *Citizens Police Data Project*, <https://invisible.institute/police-data> (last visited Dec. 2, 2022). The Intercept analyzed data culled from these records to reveal striking trends regarding the rise of misconduct complaints when new officers were exposed to the problematic tendencies of other officers. *See, e.g.*, Rob Arthur, *Bad Chicago Cops Spread Their Misconduct Like a Disease*, The Intercept (Aug. 16, 2018), <https://perma.cc/3SQU-524T>. (“The data shows that . . . officers who had been exposed to the . . . misconduct-prone cops . . . went on to show complaint rates nine times higher over the next ten years than those who hadn’t.”). As a result of the

troubling trends illuminated by the Citizens Police Data Project, the State of Illinois and the City of Chicago entered into a consent decree to formalize an “early intervention” program to “proactively identify at-risk behavior by officers” in an effort to stem the deleterious ripple effect of officer misconduct. Consent Decree at 177, *Illinois v. City of Chicago*, No. 1:17-cv-06260 (N.D. Ill. Jan. 31, 2019), ECF No. 703-1.

BuzzFeed News similarly published and analyzed a collection of disciplinary findings for approximately 1,800 New York Police Department (“NYPD”) officers, including records of disciplinary proceedings in which officers were found not guilty. Kendall Taggart & Mike Hayes, *Here’s Why BuzzFeed News Is Publishing Thousands of Secret NYPD Documents*, BuzzFeed News (Apr. 16, 2018), <https://perma.cc/XK2L-9NZB>. BuzzFeed’s reporting based on these records revealed unequal and inconsistent application of NYPD disciplinary policies, *id.*, prompting the commission of an independent panel to investigate the NYPD’s disciplinary system. Kendall Taggart, *NYPD Discipline Needs More Transparency, A Panel of Experts Said*, BuzzFeed News (Feb. 1, 2019), <https://perma.cc/2MGV-ELUX>.

And, in Maryland, news reporting has brought public attention to a database of officer misconduct reports compiled by a coalition of criminal defense lawyers

using information gathered through public records requests to improve transparency and shed light on patterns of officer misconduct. Justin Fenton, *Maryland public defenders create database to track officer misconduct*, Baltimore Banner (July 6, 2022), <https://perma.cc/GB88-DYDH>.

As these examples illustrate, information obtained through public records requests plays a vital role in ensuring that the public has the information it needs to evaluate the conduct of the law enforcement officers sworn to serve their communities, and to ensure that investigations into potential misconduct are conducted effectively and fairly. BPD's arguments, if accepted, would undermine the ability of the press to provide such information to the public, to the detriment of Marylanders and law enforcement alike.

CONCLUSION

For the foregoing reasons, amici respectfully urge the Court to affirm the holding of the Court of Special Appeals that BPD's denial of OJB's fee-waiver requests was arbitrary and capricious.

Dated: December 2, 2022

Respectfully submitted,

/s/ Lisa Zycherman

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APPENDIX A
STATEMENTS OF INTEREST OF AMICI CURIAE

The Reporters Committee for Freedom of the Press (the “Reporters Committee”) 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.

The Baltimore Sun, founded in 1837, is the largest daily newspaper in Maryland and owns the Capital Gazette and the Carroll County Times. It is part of the Tribune Publishing Company, one of the country’s leading media companies whose publications also include the Chicago Tribune, New York Daily News, Sun Sentinel (South Florida), Orlando Sentinel, Hartford Courant, The Morning Call, the Virginian Pilot and Daily Press. Popular news and information websites complement Tribune Publishing’s publishing properties and extend the company’s nationwide audience.

The D.C. Open Government Coalition is a non-profit organization founded in 2009 that is dedicated to enhancing governmental transparency and

freedom of information in the District of Columbia. Among the directors of the Coalition are individuals who have been involved for over fifteen years in advocating through the District's legislative process for greater government transparency, litigating to enforce the District's Freedom of Information Act, and advising individuals seeking access to city government records.

First Amendment Coalition ("FAC") is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. FAC advances this purpose by working to improve governmental compliance with state and federal open government laws. FAC's activities include free legal consultations on access to public records and First Amendment issues, educational programs, legislative oversight of California bills affecting access to government records and free speech, and public advocacy, including extensive litigation and appellate work. FAC's members are news organizations, law firms, libraries, civic organizations, academics, freelance journalists, bloggers, activists, and ordinary citizens.

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

The Investigative Reporting Workshop, based at the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

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

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

The National Press Club is the world’s leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

The National Press Club Journalism Institute is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life, empowering engaged citizens to shape democracy. The Institute promotes and defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its

creation, editing and distribution. NPPA’s members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

The News/Media Alliance represents news and media publishers, including nearly 2,000 diverse news and magazine publishers in the United States—from the largest news publishers and international outlets to hyperlocal news sources, from digital-only and digital-first to print news. Alliance members account for nearly 90% of the daily newspaper’s circulation in the United States. Since 2022, the Alliance is also the industry association for magazine media. It represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands, on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The Alliance diligently advocates for news organizations and magazine publishers on issues that affect them today.

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic

journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

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

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

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

**CERTIFICATE OF WORD COUNT
AND COMPLIANCE WITH RULE 8-112**

1. This brief contains 4,529 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2022, a copy of this Brief of Amici Curiae in Support of Appellee was served via MDEC on, and two paper copies were mailed by first class mail, postage prepaid, within one business day to:

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