



RCFP is one of the nation's preeminent First Amendment advocacy organizations, providing pro bono legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

Joining TAB and RCFP as Amici are 44 additional entities interested in the outcome of this dispute. These Amici represent a broad range of interests—from local news stations in El Paso to national associations in New York—who have come together to present their views on the important matters under review through this single amicus brief. A comprehensive list of these Amici, their specific statements of interest, and their corporate disclosures (as applicable) are included herewith as **Exhibit A**.

Pursuant to Local Rule CV-7(G), The undersigned counsel for TAB advises the Court that they conferred with counsel for the parties, who indicated they are unopposed to Amici filing their Amicus Brief.

No fee was paid by Plaintiff to any Amici for preparation of this Motion or the proposed Amicus Brief. Nor was any fee paid to the undersigned counsel for preparation of this Motion or the proposed Amicus Brief.

## ARGUMENT

### **I. The Court possesses broad inherent authority to appoint amici.**

District courts possess inherent authority to appoint amici curiae and accept amicus briefs. See *White Lodgings Servs. Corp. v. Snipes*, No. A-13-CA-825-SS, 2014 WL 1513964, at \*9 (W.D. Tex. Apr. 16, 2014); *Cent. Tex. Chapter, Nat'l Elec. Contractors Ass'n, Inc. v. Int'l Bhd. of Elec. Workers Local Union No. 520*, No. A-11-CA-339-SS, 2011 WL 13234892, at \*2 (W.D. Tex. Nov. 15, 2011) (hereinafter "*Cent. Tex.*"); see also *United States v. Davis*, 180 F.Supp.2d 797, 800 (E.D. La. 2001); *City of New York v. United States*, 971 F.Supp. 789, 791 n.3 (S.D.N.Y. 1997); *Waste Management of Pennsylvania v. City of New York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995); *Wyatt v.*

*Hanan*, 868 F.Supp. 1356, 1359 (M.D. Ala. 1994); N.D. Tex. Local Civ. R. 7.2(b) (prescribing procedures for filing amicus briefs).

The existence and exercise of this authority effectuates the Fifth Circuit’s recognition that, “[w]here he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention.” *Bush v. Viterna*, 740 F.2d 350, 359 (5th Cir. 1984); *see also Neonatology Associates, P.A. v. C.I.R.*, 293 F.3d 128, 133 (3d Cir. 2002) (“Even when the other side refuses to consent to an amicus filing, most courts of appeals freely grant leave to file, provided the brief is timely and well-reasoned”) (Alito, J.) (quoting Micael E. Tigar and Jane B. Tigar, *FEDERAL APPEALS—JURISDICTION AND PRACTICE* 181 (3d ed. 1999)).

**II. Movants’ short amicus brief offers new perspective on the potential impact of this lawsuit.**

While neither the Federal Rules of Civil Procedure nor Local Rules of this Court prescribe the considerations relevant to granting leave to appear as amicus, cases suggest leave is appropriate where “issues in the case have potential consequences beyond the particular parties to the suit,” and where “the amici offer useful, broader perspectives on these issues.” *Cent. Tex.*, 2011 WL 13234892, at \*2.

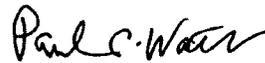
Such is the case here. The proposed Amici, over forty in total, include local television broadcasters focused on the gathering and dissemination of video content relevant to their local communities; local newspapers who employ Unmanned Aerial Vehicles in their reporting mission; nationally syndicated cable networks; and other interest groups—large and small—who have come together to voice their opinions on the important matters under review. The interests and operations of the prospective amici are thus subject to the regulatory scheme being challenged, but not currently represented by any of the parties.

To that end, and bearing in mind the Fifth Circuit's suggestion that participation by interested third parties via amicus brief is "usually most effective[]" and always most expeditious[]," *Bush*, 740 F.2d at 359, Amici submit their proposed brief, which expounds upon broader issues perceived by the Amici and elucidates the broader impact of the issues raised by the parties. They have deliberately strived to avoid duplication of the parties' arguments, and concisely highlight the impact of the challenged regulations on journalism across Texas.

### CONCLUSION

For the foregoing reasons, Amici request that the Court grant the requested leave, direct the Clerk to file the proposed Amicus Brief filed herewith as **Exhibit B**, and consider its contents in deciding the Plaintiffs' Motion for Summary Judgment.

Respectfully submitted,

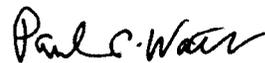


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### CERTIFICATE OF SERVICE

This certifies that on September 23, 2021, a true and correct copy of the foregoing document was served via the Court's ECF system upon all counsel of record by manner authorized by Rule 5(b)(2) of the Federal Rules of Civil Procedure.



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Paul C. Watler

# EXHIBIT A

**EXHIBIT A**

**Amicus Organizations**

|  |  |
|--|--|
| Texas Association of Broadcasters                        | National Press Club Journalism Institute,        |
| Reporters Committee for Freedom of the Press             | The National Press Club,                         |
| American Photographic Artists, Inc.,                     | The News Leaders Association,                    |
| American Society of Media Photographers, Inc.,           | News Media Alliance,                             |
| The Associated Press,                                    | Nexstar Media Inc.,                              |
| Association for Unmanned Vehicle Systems International,  | North American Nature Photographers Association, |
| The Atlantic Monthly Group LLC,                          | The Philadelphia Inquirer,                       |
| Cable News Network, Inc.,                                | Professional Photographers of America,           |
| California Broadcasters Association,                     | Radio Television Digital News Association,       |
| The Center for Investigative Reporting (d/b/a Reveal),   | The Seattle Times Company,                       |
| The Dallas Morning News, Inc.,                           | Sinclair Broadcast Group, Inc.,                  |
| Digital Media Licensing Association,                     | Society of Environmental Journalists,            |
| The E.W. Scripps Company,                                | Society of Professional Journalists,             |
| First Amendment Coalition,                               | TEGNA Inc.                                       |
| First Look Institute, Inc.,                              | Tully Center for Free Speech, and                |
| Fox Television Stations, LLC,                            | Univision Communications Inc.                    |
| Freedom of Information Foundation of Texas,              |  |
| Gannett Co., Inc.,                                       |  |
| Getty Images (US), Inc.,                                 |  |
| Graham Media Group, Inc.,                                |  |
| Gray Television, Inc.                                    |  |
| Investigative Reporting Workshop at American University, |  |
| The Media Institute,                                     |  |
| MediaNews Group Inc.,                                    |  |
| MPA - The Association of Magazine Media,                 |  |
| National Association of Broadcasters,                    |  |
| National Geographic Partners, LLC,                       |  |
| National Newspaper Association                           |  |

### Statements of Interest

American Photographic Artists (“APA”) is a 501(c)(6) not for profit organization run by, and for, professional photographers. Since 1981 APA has focused on the concerns of photographers working in the commercial advertising, corporate and editorial sectors. Recognized for its broad industry reach, APA works to champion the rights of photographers and image-makers worldwide and advocate on their behalf.

American Society of Media Photographers, Inc. (ASMP) is a 501(c)(6) non-profit trade association representing thousands of members who create and own substantial numbers of copyrighted photographs. These members all envision, design, produce, and sell their photography in the commercial market to entities as varied as multinational corporations to local mom and pop stores, and every group in between. In its seventy-six year history, ASMP has been committed to protecting the rights of photographers and promoting the craft of photography.

The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP’s content can reach more than half of the world’s population.

Association for Unmanned Vehicle Systems International (“AUVSI”) is the world’s largest nonprofit organization dedicated to the advancement of unmanned systems and robotics and represents corporations and professionals from more than 60 countries involved in industry, government, and academia. AUVSI members work in the defense, civil, and commercial markets.

The Atlantic Monthly Group LLC is the publisher of *The Atlantic* and TheAtlantic.com. Founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others, *The Atlantic* continues its 160-year tradition of publishing award-winning journalism that challenges assumptions and pursues truth, covering national and international affairs, politics and public policy, business, culture, technology and related areas.

Cable News Network, Inc. (“CNN”), a Delaware corporation, is a wholly owned subsidiary of Turner Broadcasting System, Inc., which is ultimately a wholly-owned subsidiary of AT&T Inc., a publicly traded company. CNN is a portfolio of two dozen news and information services across cable, satellite, radio, wireless devices and the Internet in more than 200 countries and territories worldwide. Domestically, CNN reaches more individuals on television, the web and mobile devices than any other cable TV news organization in the United States; internationally, CNN is the most widely distributed news channel reaching more than 271 million households abroad; and CNN Digital is a top network for online news, mobile news and social media. Additionally, CNN Newsource is the world’s most extensively utilized news service partnering with hundreds of local and international news organizations around the world.

The California Broadcasters Association (“CBA”) is the trade organization representing the interests of the over 1000 radio and television stations in our state. The CBA advocates on state

and federal legislative issues, provides seminars for member education and offers scholarship opportunities to students in the communication majors.

The Center for Investigative Reporting (d/b/a Reveal), founded in 1977, is the nation's oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website <https://www.revealnews.org/>, the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country.

The Dallas Morning News, Inc., publishes *The Dallas Morning News*, a newspaper distributed both in print and online, with focus on the Dallas-Fort Worth Metropolitan Area.

Digital Media Licensing Association ("DMLA") represents the interests of digital licensing entities that offer, for license, millions of images, illustrations, film clips, and other content on behalf of thousands of individual creators, including photojournalists to editorial and

commercial users. DMLA supports freedom of the press and the rights of photojournalists to capture the events of the world without undue restrictions.

The E.W. Scripps Company is the nation's fourth-largest local TV broadcaster, operating a portfolio of 61 stations in 41 markets. Scripps also owns Scripps Networks, which reaches nearly every American through the national news outlets Court TV and Newsy and popular entertainment brands ION, Bounce, Grit, Laff and Court TV Mystery. The company also runs an award-winning investigative reporting newsroom in Washington, D.C., and is the longtime steward of the Scripps National Spelling Bee.

First Amendment Coalition 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. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

First Look Institute, Inc. is a non-profit digital media venture that produces *The Intercept*, a digital magazine focused on national security reporting. First Look Institute operates the Press Freedom Defense Fund, which provides essential legal support for journalists, news organizations, and whistleblowers who are targeted by powerful figures because they have tried to bring to light information that is in the public interest and necessary for a functioning democracy.

Directly and through affiliated companies, Fox Television Stations, LLC, owns and operates 28 local television stations throughout the United States, including in Dallas-Fort Worth (KDFW), Houston (KRIV), and Austin (KTBC). The 28 stations have a collective market reach of 37 percent of U.S. households. Each of the 28 stations also operates Internet websites offering news and information for its local market.

The Freedom of Information Foundation of Texas ("FOIFT") is a nonprofit organization dedicated to ensuring that the public's business is conducted in public and to protecting the liberties of free speech and press guaranteed by the First Amendment. FOIFT assists individual citizens, journalists and government officials through educational seminars, an FOI Hotline, an annual conference, and a speakers bureau.

Gannett is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states and Guam — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month.

Getty Images (US), Inc. (“Getty Images”) is a leading source for visual content around the world, including a comprehensive editorial offering. Through our brands Getty Images, iStock and Unsplash, we provide a platform for editorial and creative content creators to lawfully license and monetize their work. We support these endeavors by advocating for the rights of creative professionals and journalists.

Graham Media Group is comprised of 7 local media hubs, Graham Digital and Social News Desk delivering local news, programming, advertising solutions and digital media tools for television, online, mobile, OTT, podcasts and audio devices. We are dynamic, local brands that extend well beyond the traditional TV set. Our work helps inform, celebrate and knit together the communities we serve. GMG operates in 6 states: KPRC–Houston, WDIV–Detroit and WSLR–Roanoke (NBC); KSAT–San Antonio (ABC); WKMG–Orlando (CBS); WJXT–Jacksonville (fully local), and WCWJ–Jacksonville (CW). Based in Detroit, Graham Digital is a digital media and technology development group widely recognized as a leading industry innovator. Social News Desk, headquartered in Atlanta, provides its 2500+ worldwide newsroom-customers with a single dashboard to publish, measure, curate and monetize local news content on social platforms.

Gray Television's roots begin in January 1891 with the creation of the Albany Herald in Albany, Georgia. Over the next several decades, the company divested its newspaper assets and transformed itself into the owner of the most top-rated local television stations in the country. Upon completion of all pending acquisitions, Gray will own and/or operate television stations and leading digital properties in 113 television markets, including the number-one ranked television station in 79 of those markets and the first and/or second highest ranked television station in 101 markets, based on Comscore's average all-dating ratings during calendar year 2020. Gray's television stations will cover approximately 36 percent of US television households and include more than 180 affiliates of the CBS/NBC/ABC/FOX networks. Local affiliates in Texas cover markets including: Amarillo, Lubbock, Odessa-Midland, Wichita Falls, Sherman-Ada-Paris, Tyler-Longview-Lufkin, Waco-Bryan, and Laredo, and, in six of those eight markets, Gray's station is the highest rated local television station.

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](http://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.

MediaNews Group is a leader in local, multi-platform news and information, distinguished by its award-winning original content and high quality local media. It is one of the largest news organizations in the United States, with print and online publications across the country.

MPA – The Association of Magazine Media, (“MPA”) is the industry association for magazine media publishers. The MPA, established in 1919, represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands. MPA’s membership creates professionally researched and edited content across all print and digital media on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

The National Association of Broadcasters (NAB) is a nonprofit incorporated trade association that serves and represents radio and television stations and broadcast networks. NAB’s members cover, produce and broadcast local and national news and other programming to viewers and listeners across the country. NAB seeks to preserve and enhance its members’ ability to freely disseminate programming and information of all types.

National Geographic has been igniting the explorer in all of us for 132 years through groundbreaking storytelling from the best and brightest scientists, explorers, photographers, and filmmakers in the world. A joint venture between The Walt Disney Company and the National Geographic Society, National Geographic Partners combines the global National Geographic television channels with National Geographic’s media and consumer-oriented assets. National Geographic Partners returns 27 percent of our proceeds to the nonprofit National Geographic Society to fund work in the areas of science, exploration, conservation, and education.

National Newspaper Association is a 2,000 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Pensacola, FL.

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 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 News Leaders Association was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

The News Media Alliance is a nonprofit organization representing the interests of digital, mobile and print news publishers in the United States and Canada. The Alliance focuses on the major issues that affect today’s news publishing industry, including protecting the ability of a free and independent media to provide the public with news and information on matters of public concern.

Nexstar Media Group, Inc. owns, operates, programs or provides sales and other services to 199 television stations (including partner stations) in 116 markets or more than 68% of all U.S. television households including 120 local web sites and 284 local news and weather mobile apps. Nexstar's local affiliates in Texas operate in markets including: Amarillo, Lubbock, Midland/Odessa, El Paso, San Angelo, Abilene, Wichita Falls, Dallas/Fort Worth, Waco/Temple/Bryan, Austin, Harlingen/Wslaco/Brownsville/McAllen, Tyler/Longview, and Houston.

North American Nature Photography Association (NANPA) is a 501(c)(6) non-profit organization founded in 1994. NANPA promotes responsible nature photography (both stills and video) as an artistic medium for the documentation, celebration, and protection of the natural world. NANPA is a critical advocate for the rights of nature photographers on a wide range of issues, from intellectual property to public land access.

The Philadelphia Inquirer, owned by the Lenfest Institute for Journalism, is the largest newspaper in the United States operated as a public-benefit corporation. It publishes The Inquirer as well as the Philadelphia Daily News in print, and online at [www.inquirer.com](http://www.inquirer.com). The Inquirer has won 20 Pulitzer Prizes. Under the non-profit ownership of the Institute, which is dedicated solely to the mission of preserving local journalism, the Inquirer is dedicated to public service journalism and news innovation.

Professional Photographers of America (PPA) is a 501(c)(6) non-profit organization representing photographers and photographic artists from dozens of specialty areas including portrait, wedding, commercial, advertising, and art. The professional photographers represented by the PPA have been the primary caretakers of world events and family histories for the last 150 years, and have shared their creative works with the public secure in the knowledge that their rights in those works would be protected.

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 Seattle Times Company, locally owned since 1896, publishes the daily newspaper *The Seattle Times*, together with the *Yakima Herald-Republic* and *Walla Walla Union-Bulletin*, all in Washington state.

Sinclair is one of the largest and most diversified television broadcasting companies in the country. The Company owns, operates and/or provides services to 191 television stations in 89 markets, including Abilene (KTXS), Amarillo (KVII), Austin (KEYE), Beaumont (KFDM), El Paso (KFOX), and San Antonio (KABB/WOAI). The Company is a leading local news provider in the country and has multiple national networks, live local sports production, as well as stations affiliated with all the major networks.

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.

As one of the most geographically diverse broadcasters in the U.S., TEGNA is a best-in-class operator with 64 television stations and two radio stations in 51 markets from coast to coast. We are the largest owner of Big Four affiliates in the top 25 markets among independent station groups and reach 41.7 million television households, or approximately 39 percent of all TV households nationwide. Each month, TEGNA reaches 75 million adults across our digital platforms. Across Twitter, Facebook and Instagram, TEGNA stations have over 32 million social followers. TEGNA's local affiliates in Texas cover 85% of the state, including the following markets: San Antonio, Dallas, Houston, Austin, Waco, College Station, Tyler, Corpus Christi, Beaumont, Abilene, and San Angelo.

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.

Univision Communications Inc. (UCI) is the leading media company serving Hispanic America. UCI is a leading content creator in the U.S. and includes the Univision Network, UniMás and Univision Cable Networks. UCI indirectly through its subsidiaries owns and operates television stations KXLN in Houston, KAKW in Austin, KWEX in San Antonio and KUVN in Dallas Fort Worth.

## Corporate Disclosures

American Photographic Artists, Inc. ("APA") has no parent company nor issues stock. Accordingly, no publicly-held company owns 10% or more of its stock.

American Society of Media Photographers, Inc. ("ASMP") has no parent company nor issues stock. Accordingly, no publicly-held company owns 10% or more of its stock.

The Associated Press is a global news agency organized as a mutual news cooperative under the New York Not-For-Profit Corporation law. It is not publicly traded.

Association for Unmanned Vehicle Systems International ("AUVSI") has no parent company nor issues stock. Accordingly, no publicly-held company owns 10% or more of its stock.

The Atlantic Monthly Group LLC is a privately-held media company, owned by Emerson Collective and Atlantic Media, Inc. No publicly held corporation owns 10% or more of its stock.

Cable News Network, Inc. ("CNN") is a Delaware corporation that owns and operates numerous news platforms and services. CNN is ultimately a wholly-owned subsidiary of AT&T Inc., a publicly traded corporation. AT&T Inc. has no parent company and, to the best of CNN's knowledge, no publicly held company owns ten percent or more of AT&T Inc.'s stock.

The California Broadcasters Association is an incorporated nonprofit trade association with no stock.

The Center for Investigative Reporting (d/b/a Reveal) is a California non-profit public benefit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It has no statutory members and no stock.

The Dallas Morning News, Inc., is owned by DallasNews Corporation.

Digital Media Licensing Association ("DMLA") is a 501(c)(6) New York non-profit and has no parent or affiliated companies.

The E.W. Scripps Company is a publicly traded company with no parent company. No individual stockholder owns more than 10% of its stock.

First Amendment Coalition is a nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

First Look Institute, Inc. is a non-profit non-stock corporation organized under the laws of Delaware. No publicly-held corporation holds an interest of 10% or more in First Look Institute, Inc.

Fox Television Stations, LLC (FTS) is an indirect subsidiary of Fox Corporation, a publicly held company. No other publicly held company owns 10% or more of the stock of Fox Corporation.

The Freedom of Information Foundation of Texas ("FOIFT") is a 501(c)(3) organization. It has no parent corporation, no affiliates, and no publicly held company owns 10 percent or more of its stock.

Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. BlackRock, Inc. and the Vanguard Group, Inc. each own ten percent or more of the stock of Gannett Co., Inc.

Getty Images (US), Inc., a New York corporation that is not publicly traded, is a wholly owned subsidiary of Getty Images, Inc. Getty Images, Inc., a Delaware corporation that is not publicly traded. No publicly traded company owns 10% or more of Getty Images (US), Inc.'s stock.

Graham Holdings Company, Inc. owns 100% of Graham Media Group, Inc.

No publicly held company owns 10% or more of Gray Television Inc.'s stock.

The Investigative Reporting Workshop is a privately funded, nonprofit news organization based at the American University School of Communication in Washington. It issues no stock.

The Media Institute is a 501(c)(3) non-stock corporation with no parent corporation.

MediaNews Group Inc. is a privately held company. No publicly-held company owns ten percent or more of its equity interests.

MPA - The Association of Magazine Media has no parent companies, and no publicly held company owns more than 10% of its stock.

The National Association of Broadcasters is a nonprofit, incorporated association that has not issued any shares or debt securities to the public, and has no parent companies, subsidiaries, or affiliates that have issued any shares or debt securities to the public.

National Geographic Partners, LLC (NGP), a joint venture between The Walt Disney Company and the National Geographic Society, is committed to bringing the world premium science, adventure and exploration content across an unrivaled portfolio of media assets. NGP returns 27 percent of our proceeds to the nonprofit National Geographic Society to fund work in the areas of science, exploration, conservation and education. The Walt Disney Company and National Geographic Society each own more than 10% of National Geographic Partners LLC's shares.

National Newspaper Association is a non-stock nonprofit Florida corporation. It has no parent corporation and no subsidiaries.

The National Press Club Journalism Institute is a not-for-profit corporation that has no parent company and issues no stock.

The National Press Club is a not-for-profit corporation that has no parent company and issues no stock.

The News Leaders Association has no parent corporation and does not issue any stock.

News Media Alliance is a nonprofit, non-stock corporation organized under the laws of the commonwealth of Virginia. It has no parent company.

Nexstar Media Inc. is owned 100% by Nexstar Media Group, Inc.

North American Nature Photographers Association (“NANPA”) has no parent company nor issues stock. Accordingly, no publicly-held company owns 10% or more of its stock.

No publicly held corporations own any stock in the Philadelphia Inquirer, PBC, or its parent company, the non-profit Lenfest Institute for Journalism, LLC.

Radio Television Digital News Association is a nonprofit organization that has no parent company and issues no stock.

The Seattle Times Company: The McClatchy Company, LLC owns 49.5% of the voting common stock and 70.6% of the nonvoting common stock of The Seattle Times Company.

Sinclair Broadcast Group, Inc. is a Maryland corporation which is publicly traded on NASDAQ under the symbol SBGI.

The Society of Environmental Journalists is a 501(c)(3) non-profit educational organization. It has no parent corporation and issues no stock.

Society of Professional Journalists is a non-stock corporation with no parent company.

The Vanguard Group, Inc. and BlackRock, Inc. each own 10% of TEGNA Inc.’s company stock.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

Univision Communications Inc. is wholly owned by Broadcast Media Partners Holdings, Inc., which is wholly owned by Univision Holdings, Inc. Grupo Televisa, S.A.B. indirectly holds a 10% or greater ownership interest in the stock of Univision Holdings, Inc. No publicly held company owns 10% or more of Univision Communications Inc. or any of its parent companies, subsidiaries, or affiliates.

Amicus Professional Photographers of America (“PPA”) has no parent company, and issues no stock. Accordingly, no publicly-held company owns 10% or more of its stock.

# EXHIBIT B



constitutional scrutiny, and the undersigned respectfully submit that the challenged provisions should be invalidated as requested in the Motion.

### **BACKGROUND**

Amici represent local broadcasters and publishers across Texas, as well as others around the country committed to defending the newsgathering rights of journalists and the news-consuming public they serve.

TAB is an Austin-based trade association representing the interests of Texas' over 1,200 free, over-the-air radio and television stations. Formed in 1953, membership is open to commercial and non-commercial radio and television stations, companies doing business with the broadcast industry, current students and educators, and retired industry professionals.

The Reporters Committee for Freedom of the Press was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, 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.

Joining TAB and RCFP as Amici are 44 additional entities interested in the outcome of this dispute. These Amici represent a broad range of interests—from local news stations in El Paso to national associations in New York—who have come together to present their views on the important matters under review through this single amicus brief. A comprehensive list of these Amici, their specific statements of interest, and their corporate disclosures (as applicable) are included herewith as **Exhibit A**.

## ARGUMENT

### I. Broadcasters and reporters use UAVs to provide a tangible public benefit.

Frank discussion of Unmanned Aerial Vehicles (“UAVs”) begins with an incontrovertible truth—they are valuable newsgathering tools. As Plaintiffs point out, similar to traditional implements like helicopters and fixed-wing aircraft, UAVs allow broadcasters and other journalists to reach the scene more quickly, follow events from an elevated perspective, and inform citizens in more engaging ways. *See* Motion at 2–6; *see also* David A. Fischer, DRON’T STOP ME NOW: PRIORITIZING DRONE JOURNALISM IN COMMERCIAL DRONE REGULATION, 43 Colum. J.L. & Arts 107, 108 (2019); *see also* David Goldberg, DRONALISM: JOURNALISM, REMOTELY PILOTED AIRCRAFT, LAW AND REGULATION, 10 FIU L. Rev. 405, 414 (2015).

This utility extends to newsgathering and reporting. Broadcasters in Texas alone have used UAVs to cover:

- Flooding, hurricanes, and other natural disasters in Houston and Central Texas;<sup>1</sup>
- Crane accidents in Dallas and Austin;<sup>2</sup>
- Fires, explosions, and other industrial accidents;<sup>3</sup>

<sup>1</sup>*Birds-eye view of Houston floods from SkyDrone13*, KTRK-TV HOUSTON (Aug. 8, 2017), <https://abc13.com/weather/birds-eye-view-of-houston-floods-from-skydrone13/2285865/>; KHOU 11 NEWS, *Drone 11: Hurricane Laura aftermath in Orange, Tex.*, FACEBOOK (Aug. 27, 2020), <https://www.facebook.com/KHOU11/videos/drone-11-hurricane-laura-aftermath-in-orange-texas/757296301756704/>; *Drone video captures Hurricane Laura damage in Orange, Tex.*, KMBT 12 NEWS (Aug. 27, 2020), <https://www.12newsnow.com/article/weather/hurricane/drone-video-captures-hurricane-laura-damage-in-orange-texas/502-8b8a02cc-18a5-47d7-b8f2-2527b3085437>; *Aerial Video: Central Texas flooding devastation from above*, KXAN (Oct. 19, 2018), <https://www.kxan.com/news/aerial-video-central-texas-flooding-devastation-from-above/>; *3 killed, at least 20 injured after tornado rips through Onalaska in Polk County*, KSAT (Apr. 23, 2020), <https://www.ksat.com/news/2020/04/23/3-killed-at-least-20-injured-after-tornado-rips-through-onalaska-in-polk-county/>.

<sup>2</sup> *Crane collision injures 22, hospitalizes 16 in East Austin*, WFAA (Sept. 7, 2020), <https://www.wfaa.com/article/news/local/east-austin-mueller-cranes-collide-collapse/269-7362cd13-326c-4bd7-a1c3-0b445e2800d6>; *Vehicles to Be Removed From Elan City Lights Parking Garage on Monday*, NBCDFW (Oct. 5, 2019), <https://www.nbcdfw.com/news/local/vehicles-to-be-removed-from-elan-city-lights-parking-garage-on-monday/273265/>.

<sup>3</sup> *SkyDrone13 over the Crosby Square Apartment fire damage*, KTRK-TV HOUSTON (July 10, 2017), <https://abc13.com/news/skydrone13-over-the-crosby-square-apartment-fire-damage/2203639/>; *Amazing drone video over site of massive Houston explosion at Watson Grinding and Manufacturing*, KHOU 11 NEWS (Jan. 24 2020),

- Protests during the summer of 2020;<sup>4</sup>
- Structures of civic pride like a high school football stadium in Crosby;<sup>5</sup>
- Family events such as a sandcastle competition in Galveston<sup>6</sup> or the Houston Marathon;<sup>7</sup> and
- A simple sunrise in Seabrook.<sup>8</sup>

In San Antonio, as observed by the local paper, “[a] single photograph” taken via UAV “powerfully distilled the desperation felt by millions of Americans” during the early days of the COVID-19 pandemic.<sup>9</sup> The picture, which captured staggering lines at an area food bank, garnered national attention, and “helped trigger millions of dollars in individual and corporate donations to the Food Bank.” *Id.* Regarding UAVs, the photographer specifically noted that:

While drones won’t replace traditional photography, they are a wonderful addition to our toolbox. A helicopter would have put me much higher; a ladder wouldn’t have been high enough. But the drone, flying about 150 to 200 feet off the ground, allowed

<https://www.khou.com/video/news/amazing-drone-video-over-site-of-massive-houston-explosion-at-watson-grinding-and-manufacturing/285-ff997f0c-b35c-47e3-a87b-7a852d1c5412>; *Incredible drone video shows I-10 barge crash near Houston*, KHOU 11 NEWS (Sept. 20, 2019), <https://www.khou.com/video/news/state/texas-news/drone-video-i-10-san-jacinto-berge-crash/502-b171672e-a336-4a4e-b12f-0d11143237cd>.

<sup>4</sup> *Lawsuit: Protester says he was running away when APD officer shot him in the face with ‘less lethal round*, KXAN (Nov. 10, 2020), <https://www.kxan.com/austin-george-floyd-mike-ramos-protests/lawsuit-protester-says-he-was-running-away-when-apd-officer-shot-him-in-the-face-with-less-lethal-round/>.

<sup>5</sup> *FREEDOM FIELD: Step inside Alvin ISD’s \$41.5 million football stadium*, KTRK-TV HOUSTON (Sept. 21, 2018), <https://abc13.com/sports/step-inside-alvin-isds-415-million-football-stadium/4306682/>; *SkyDrone 13: Crosby ISD’s beautiful Cougar Stadium*, KTRK-TV HOUSTON (Sept. 25, 2019), <https://abc13.com/sports/skydrone13-crosby-isds-beautiful-cougar-stadium/4422894/>.

<sup>6</sup> *SkyDrone 13 sandcastle competition*, KTRK-HOUSTON (June 15, 2017), <https://abc13.com/hobbies/skydrone13-sandcastle-competition-/2105142/>.

<sup>7</sup> *SkyDrone 13 gets amazing views of Chevron Houston Marathon*, KTRK-HOUSTON (Jan. 5, 2021), <https://abc13.com/sports/skydrone13-gets-amazing-views-of-the-chevron-houston-marathon/2943510/>.

<sup>8</sup> *Skydrone13 captures a beautiful sunrise in Seabrook, Tex.*, KTRK-HOUSTON (Mar. 14, 2018) <https://abc13.com/travel/skydrone13-captures-a-beautiful-sunrise-in-seabrook-texas/3215638/>.

<sup>9</sup> Marc Duvoisin, *The story behind this viral photo of the San Antonio Food Bank during coronavirus shutdowns*, SAN ANTONIO EXPRESS-NEWS (May 14, 2020), <https://www.expressnews.com/news/local/article/The-story-behind-the-viral-photo-of-cars-parked-15270219.php>; *How San Antonio Food Bank became lifeline for South Texas during COVID-19 pandemic*, KSAT (July 6, 2020), <https://www.ksat.com/news/local/2020/07/06/how-san-antonio-food-bank-became-lifeline-for-south-texas-during-covid-19-pandemic/>.

me to show the scale of the need while still allowing viewers to feel connected to the people in the cars.

*Id.*

More recently, UAVs played a pivotal role in coverage of the winter storm that wreaked havoc across the state. Texans searching for basic necessities leaned on local news outlets, who deployed drones to offer perspective and updates.<sup>10</sup> The storytelling power of UAVs in the hands of broadcasters and reporters is demonstrable and profound.

UAVs also enjoy certain advantages over other aerial newsgathering platforms. *See* Cynthia D. Love, Sean T. Lawson, Avery E. Holton, NEWS FROM ABOVE: FIRST AMENDMENT IMPLICATIONS OF THE F.A.A. BAN ON COMMERCIAL DRONES, 21 B.U.J. Sci. & Tech. L. 22, 28–34 (2015) (hereinafter “NEWS FROM ABOVE”). A high-quality consumer UAV with an HD camera can cost as little as \$1,000, weigh just ten pounds, and operate at a fraction of the cost of traditional manned flights. *See* NATIONAL LEAGUE OF CITIES, CITIES AND DRONES: WHAT CITIES NEED TO KNOW ABOUT UNMANNED AERIAL VEHICLES 1 (2016) (hereinafter “CITIES AND DRONES”); NEWS FROM ABOVE at 33. UAVs are thus smaller, quieter, and less expensive to obtain and operate than traditional aircraft.

Generally speaking, they are safer too. While UAVs of course carry their own risks, reported incidents “represent a miniscule fraction of drone operations, the overwhelming majority of which help to augment and serve communities for the better.” CITIES AND DRONES at 1. It goes without saying that “[w]hen a fuel-filled, 1,500 pound JetRanger [helicopter] becomes controlled solely by gravity, the risks, in terms of loss of life, injury and property damage are vastly worse

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<sup>10</sup> Chris Sadeghi (@chrissadeghi), TWITTER (Feb. 11, 2021), <https://twitter.com/chrissadeghi/status/1359897647931342855>; Amanda McCoy, *Drone footage shows cleanup effort to remove dozens of vehicles involved in massive pile-up*, FT.-WORTH STAR-TELEGRAM (Feb. 11, 2021), <https://www.star-telegram.com/news/local/fort-worth/article249187560.html>; Diana Wray, *A Drone’s-eye View of a Snowbound Houston*, HOUSTONIA (Feb. 15, 2021), <https://www.houstoniamag.com/news-and-city-life/2021/02/a-drones-eye-view-of-snowbound-houston>.

than if the same were to occur with a battery-powered, 3-pound model aircraft.” NEWS FROM ABOVE at 33–34. In this way, UAVs have “oftentimes replaced more hazardous operations,” as they operate more safely and less intrusively than other implements. CITIES AND DRONES AT 1.

**II. Chapter 423 is a speaker-based restriction that discriminates against the press and is therefore particularly corrosive to fundamental press freedoms.**

Despite the numerous benefits offered by UAVs in the pursuit of local journalism, the specter of civil and criminal liability under Chapter 423 constrains their use in newsgathering. The experiences of the journalists identified by Plaintiffs who are wary of the potential legal exposure that accompanies every UAV operation under the current regulatory scheme, *see* Compl. ¶¶ 57–89, ECF No. 1, typify the concerns of the Amici in this regard. And the deficiencies in Chapter 423 are of constitutional moment. As a speaker-based regulation that discriminates against the press, Chapter 423 violates the First Amendment in a way that directly harms the free flow of newsworthy information to the public.

**A. Chapter 423 fails strict scrutiny.**

To that point, Chapter 423 makes exceptions for certain speakers, but not for journalists, which is of particular concern to Amici.<sup>11</sup> As the Court has observed, “[c]ertain individuals are permitted to capture UAV images under the Surveillance Provisions, such as professors, students, professional engineers, and insurance company employees,” but not the press. Order at 19, ECF No. 52. Likewise, with respect to the No-Fly provisions of the law, “inconsistent prohibition of UAVs indicates that [they] are restricting more speech than necessary to achieve the government’s alleged interest.” *Id.* at 24.

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<sup>11</sup> Specifically, Texas Government Code Sections 423.002, 423.003, 423.004, and 423.006 (together “Surveillance Provisions”), and Sections 423.0045 and 423.0046 (together “No-Fly Provisions”).

These provisions, as written, permit a favored few to engage in comparatively unrestricted UAV photography, but forbid broadcasters and reporters—the public’s newsgathering arm—from doing the same. These provisions are, as such, speaker-based regulations, which are presumptively unconstitutional, as Plaintiffs argue. *See* Compl. ¶¶ 97-102; *see also Police Dept. of Chicago v. Mosley*, 408 U.S. 92 (1972) (invalidating a law that prohibited picketing within 150 feet of a public school during school hours except by labor unions); *Carey v. Brown*, 447 U.S. 455 (1980) (invalidating a statute that prohibited all residential picketing except by labor unions). Such regulations are subject to strict scrutiny, meaning they are valid only if the state can demonstrate a compelling need for the regulation and that the regulation is narrowly tailored to that need. *See Sorrell v. IMS Health*, 564 U.S. 552 (2011) (finding that a statute imposing speaker-based burdens on protected expression is subject to heightened scrutiny); *Boos v. Barry*, 485 U.S. 312 (1988) (finding that, even with a compelling government interest, a regulation failed because it was not narrowly tailored).

Speaker-based restrictions are subject to strict scrutiny because they operate to “burden[] disfavored speech by disfavored speakers,” *Sorrell*, 564 U.S. at 564, and permit the government to target a form of “protected expression” that it finds “too persuasive” while leaving “unburdened those speakers whose messages are in accord with its own views,” *id.* at 580. When speaker-based restrictions, such as discriminatory taxation schemes, burden members of the news media, they can serve “as a censor to check critical comment by the press, undercutting the basic assumption of our political system that the press will often serve as an important restraint on government.” *Minn. Star and Tribune Co. v. Minn. Comm’r of Rev.*, 460 U.S. 575, 585 (1983).

Here, the restrictions allow UAVs to be used by some operators in certain contexts but prohibit the press from using UAVs to collect the same information and report it in the public

interest. That is, professors, pipeline operators, surveyors, real estate brokers, and professional engineers can use UAVs for a variety of enumerated reasons, but the press cannot; similarly, certain speakers can use UAVs to photograph disaster areas, animal feedlots, energy facilities, and correctional institutions, but the press cannot. *See* Tex. Gov't Code §§ 423.002, 423.0045, and 423.0046. The restrictions therefore resemble the types of regulations that have been routinely invalidated as discriminating against the press (or among certain members of the press) because of the concern that such regulations can be used as tools of press censorship. *See, e.g., Minn. Star*, 460 U.S. at 575 (finding use tax on paper and ink singles out the press); *Ark. Writers Project, Inc. v. Ragland*, 481 U.S. 221, 234 (1987) (finding tax scheme that exempted certain journals but not general interest magazines unconstitutional); *Grosjean v. Am. Press Co.*, 297 U.S. 233, 251 (1936) (finding tax imposed on high-circulation publications unconstitutional).

**B. Chapter 423 also contravenes the purpose underlying the First Amendment's protections for newsgathering.**

The challenged provisions fail not only the test of legal sufficiency articulated above and by the Plaintiffs, they fail the test of prudent public policy as well. The underpinnings of American press freedom are remarkably practical: “[I]n a society in which each individual has but limited time and resources with which to observe at first hand . . . he relies necessarily upon the press to bring him in convenient form the facts of those operations.” *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491 (1975). The press “serves as the information-gathering agent of the public,” *Nixon v. Warner Comm'cns, Inc.*, 435 U.S. 589, 609 (1978), meaning “news gathering,” as the Supreme Court has observed, must receive First Amendment protection. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 576 (1980) (“[W]ithout some protection for seeking out the news, freedom of the press could be eviscerated”) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 681

(1972)). In short, we protect freedom of the press because many citizens lack the time and resources to personally observe a day's many newsworthy events.

These precepts typically facilitate press access to sources of information available to members of the public. *See Richmond Newspapers*, 448 U.S. at 573 (“media representatives enjoy the same right of access as the public . . .”); *Cox Broadcasting Corp.*, 420 U.S. at 495; *see also Health Sys. Agency of N. Virginia v. Virginia State Bd. of Med.*, 424 F. Supp. 267, 272 (E.D. Va. 1976) (“[T]he right of the press to gather news extends at a minimum to access to sources of information available to members of the general public.”); *Times-Picayune Pub. Corp. v. Lee*, CIV.A. 88-1325, 1988 WL 36491, at \*9 (E.D. La. Apr. 15, 1988) (“This right includes, at a minimum, a right of access to information made available to the public or made available generally to the press.”). Were it otherwise, the information-gathering mission of the press would be thwarted, and the public left in the dark about matters of public concern. *See Richmond Newspapers*, 448 U.S. at 573 (“this validates the media claim of functioning as surrogates for the public”).

### **III. Chapter 423 does not effectively further any safety or privacy interests.**

While Defendants may argue that the statute's intrusion on that newsgathering mission is motivated by benevolent intentions, Chapter 423 fails to effectively further any cognizable public interest. The Supreme Court long ago recognized that “airspace, apart from the immediate reaches above the land, is part of the public domain.” *United States v. Causby*, 327 U.S. 256, 266 (1946). That is why the commonplace operation of traditional aircraft by commercial operators in the airspace above private property does not implicate traditional conceptions of privacy or seclusion.

In *Bevens v. Gaylord Broadcasting Co., L.P.*, No. 05-01-00895-CV, 2002 WL 1582286 (Tex. App.—Dallas July 18, 2002, pet. denied), for example, a Texas court of appeals affirmed dismissal of claims for negligence, trespass, and infliction of emotional distress asserted by a

homeowner against a news crew whose “helicopter hovered over the [plaintiff]’s residence” while “working on a story about the poor condition of rental properties.” *Id.* at \*1. As the court observed, “[I]andowners have no right to exclude overflights above their property, because airspace is part of the public domain.” *Id.* at \*6. Such operations therefore do not “as a matter of law, rise to the level of ‘substantial interference’ with the use and enjoyment of the underlying land.” *Id.*

The Supreme Court recognized similar principles in *Florida v. Riley*, 488 U.S. 445 (1989), when it assessed whether a suspect had reasonable expectations of privacy in his “partially covered greenhouse in a residential backyard from the vantage point of a helicopter located 400 feet above the greenhouse.” *Id.* at 447–48. While *Riley* involved government surveillance implicating Fourth Amendment concerns, the Court concluded that the homeowner “could not reasonably have expected that his greenhouse was protected from *public or official* observation from a helicopter had it been flying within the navigable airspace for fixed-wing aircraft.” *Id.* at 450–51 (emphasis added).

Together, *Beyers* and *Florida* bring the potentially absurd implications of Chapter 423 into bold relief. A broadcaster operating a ten-pound electric drone over the properties in those cases may well have faced liability, while another operating a two-ton helicopter would not. This compounds Amici’s concerns with the unjustifiable distinction between newsgathering and other commercial activities in the statute.

The State’s filings in this case only exacerbate that concern. They suggest, for example, that because the Surveillance Provisions require specific intent, and because “[t]he question of specific intent to commit a crime is for the jury to decide,” 7 Chapter 423 causes no issue. *See* Response at 4, 18–19, ECF No. 68. Put another way, the State argues that this Court need not worry about the Surveillance Provisions’ actual prohibitions, because the statute saddles future

juries with the task of divining that imperceptible line where lawful “observation,” *see Riley*, 488 U.S. at 450–51, strays into misdemeanor “surveillance.” The State effectively concedes one of the primary flaws with the statute. *See Motion* at 28–34.

The State also strays into dangerous territory, asserting that Chapter 423 is permissible because it denies access to just one of many tools, and “journalists remain free to capture the same images using conventional aircraft or other means.” Defs’ MSJ at 18, ECF No. 65. But as Justice Black recognized long ago, “First Amendment freedoms can no more validly be taken away by degrees than by one fell swoop.” *N.L.R.B. v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58, 80 (1964) (Black, J., concurring). That is why courts reject the artificial distinction between speech and the instruments that enable it invoked by the State.

In *Saia v. People of State of New York*, 334 U.S. 558 (1948), for example, the Supreme Court invalidated “a penal ordinance of the City of Lockport, New York, which forb[ade] the use of sound amplification devices except with permission of the Chief of Police.” *Id.* at 558. As the Court observed, “[w]hen a city allows an official to ban [loud-speakers] in his uncontrolled discretion, it sanctions a device for suppression of free communication of ideas.” *Id.* at 562. Courts should not blind themselves to the impact of such regulations on speech just because authorities targeted a particular instrumentality rather than the message it conveys. “Annoyance at ideas can be cloaked in annoyance at sound” or other contrivances. *Id.* “The power of censorship inherent in this type of ordinance,” the Court observed, “reveals its vice.” *Id.*

The State also cannot justify its regulation on the basis that it targets preliminary “conduct” inherent in the formation of speech, rather than the fully formed speech itself. In *Turner v. Lieutenant Driver*, 848 F.3d 678 (5th Cir. 2017), the Fifth Circuit recognized that “the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit

government form limiting the stock of information from which members of the public may draw.” *Id.* at 688 (quoting *F. Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978)). “Furthermore,” the Court observed, “The Supreme Court has long recognized that the First Amendment protects film,” and “[a] corollary to this principle is that the First Amendment protects the act of making film.” *Id.* at 688–89.

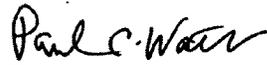
In short, “the Supreme Court has never ‘drawn a distinction between the process of creating a form of pure speech . . . and the product of these processes . . . in terms of the First Amendment protection afforded.” *Id.* (quoting *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1061–62 (9th Cir. 2010)); *see also* *ACLU of Illinois v. Alvarez*, 679 F.3d 583, 597 (7th Cir. 2012) (recognizing that “[a]udio and audiovisual recordings are communication technologies, and as such, they enable speech”). Condoning arbitrary regulation of those technologies would nonetheless allow “the State [t]o effectively control or suppress speech by the simple expedient of restricting an early step in the speech process rather than the end result.” *Alvarez*, 679 F.3d at 597.

In sum, as currently formulated, Chapter 423 cuts off broadcasters’ and other journalists’ access to a traditionally public domain, in furtherance of purported privacy rights that do not exist, while incentivizing the use of less desirable alternatives. The statute’s practical effects and the State’s arguments in support fall woefully short of justifying those significant First Amendment intrusions.

## CONCLUSION

Chapter 423 sought to “strike a balance between the right to privacy and the rights to free speech and a free press.” Texas Bill Analysis, H.B. 912, 5/7/2013. Despite its drafters’ intent, that balance has not been achieved. For the reasons set forth above and in the Plaintiffs’ Motion, the undersigned Amici respectfully submit that the Surveillance and No-Fly Provisions are unconstitutional, and should be invalidated.

Respectfully submitted,



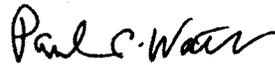
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**CERTIFICATE OF SERVICE**

This certifies that on September 23, 2021, a true and correct copy of the foregoing document was served via the Court's ECF system upon all counsel of record who are registered ECF users in a manner authorized by Rule 5(b)(2) of the Federal Rules of Civil Procedure.



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Paul C. Watler

