

NORTH CAROLINA COURT OF APPEALS

GRAY MEDIA GROUP, INC.,)
d/b/a/ WBTV,)
)
 Plaintiff-Appellant,)
)
v.)
)
CITY OF CHARLOTTE,)
)
 Defendant-Appellee.)
)

From Mecklenburg County
CASE NO. 21-CVS-10398

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

Pursuant to Rule 28(i)(1) of the North Carolina Rules of Appellate Procedure, the Reporters Committee for Freedom of the Press and the 22 media organizations listed below (“amici”), through their counsel, respectfully petition this honorable Court for leave to file the attached amici curiae brief in support of in support of Plaintiff-Appellant Gray Media Group, Inc., d/b/a WBTV (“WBTV”).

In support of this motion, amici show unto the Court the following:

1. Amici are:

- **The Reporters Committee for Freedom of the Press** is an unincorporated nonprofit association. The Reporters Committee was founded by journalists and media lawyers in 1970, when the nation's press 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 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 Committee to Protect Journalists** is an independent, nonprofit organization that promotes press freedom worldwide. We defend the right of journalists to report the news without fear of reprisal. CPJ is made up of about 40 experts around the world, with headquarters in New York City. A board of prominent journalists from around the world helps guide CPJ's activities.

- **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.
- **Gannett** is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states, including North Carolina's The Fayetteville Observer and Asheville Citizen-Times — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month.
- **The International Documentary Association (IDA)** is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.
- **The McClatchy Company, LLC** is a publisher of iconic brands such as *The Charlotte Observer*, *The (Raleigh) News & Observer*, *The (Durham) Herald Sun*, *the Miami Herald*, *The Kansas City Star*, *The Sacramento Bee*, and the *Fort Worth Star-Telegram*. McClatchy operates media companies in 30 U.S. markets in 16 states,

providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats.

McClatchy is headquartered in Sacramento, California.

- **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 Association of Black Journalists (NABJ)** is an organization of journalists, students and media-related professionals that provides quality programs and services to and advocates on behalf of black journalists worldwide. Founded by 44 men and women on December 12, 1975 in Washington, D.C., NABJ is the largest organization of journalists of color in the nation.
- **The National Freedom of Information Coalition** 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.

- **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** 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.
- **The North Carolina Open Government Coalition** unites organizations interested in ensuring and enhancing the public's access to government activity, records and meetings. The nonpartisan coalition educates people about their rights to gain access to records

and meetings that are considered public under North Carolina law. Through educational programming and public service, the coalition advocates for the principles and benefits of open government at all levels.

- **The North Carolina Press Association** is a trade association of 150 daily and weekly newspapers across the state. Since 1873 NCPA has supported North Carolina newspapers, readership and advertising. NCPA works to protect the public's right to know through the defense of open government and First Amendment freedoms, and NCPA helps maintain the public's access to local, state and federal governments.
- **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.
- **Sinclair Broadcast Group, Inc.** is a diversified media company and leading provider of local news and sports. The Company owns, operates and/or provides services to 185 television stations in 86 markets; is a leading local news provider in the country; owns multiple national networks; and has TV stations affiliated with all the major broadcast

networks and owns and/or operates 21 RSN brands. Sinclair's content is delivered via multiple-platforms, including over-the-air, multi-channel video program distributors, and digital and streaming platforms.

- **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.
- **Student Press Law Center** ("SPLC") is a nonprofit, nonpartisan organization which, since 1974, has been the nation's only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First Amendment to the Constitution of the United States. SPLC provides free legal assistance, information and educational materials for student journalists on a variety of legal topics.

- **WRAL-TV** provides broadcast and online coverage of news about Raleigh and the surrounding area. It is owned by Capitol Broadcasting Company, Incorporated (“CBC”), a North Carolina corporation located in Wake County.

2. This case concerns whether a government agency may disclaim its obligations to disclose records under the Public Records Act, N.C. Gen. Stat. §§ 132-1 et seq (the “Public Records Act” or the “Act”), on the ground that the requested documents are in the actual possession of a third-party contractor, even when the agency has retained control over those records. The answer to this question will have broad ramifications for government transparency in North Carolina. If this narrow interpretation of the Act is adopted, agencies could avoid scrutiny simply by transferring records to private parties.

3. As members of the news media and organizations that advocate on behalf of journalists in North Carolina and elsewhere, amici have a significant interest in ensuring that North Carolina courts properly interpret and apply the Act.

4. The attached amici brief urges the Court to find that the records requested by WBTV were, at all times, public records subject to disclosure under the Act, and to reverse the Superior Court’s order denying WBTV’s motion for summary judgment.

5. This amici brief can aid the Court by explaining that vital journalism would be hampered—and sometimes impossible—if the government’s interpretation

of the Act is adopted. Further, the amici brief explains that numerous courts have rejected similar interpretations. Instead, based on public records laws similar to the Act, courts in multiple states have ruled that records are still subject to disclosure if the government is in constructive control of them, regardless of whether they are in the actual possession of a third party.

WHEREFORE, amici pray that they be permitted to file the attached amici brief in this action.

This the 23rd day of March, 2023.

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CERTIFICATE OF SERVICE

I certify that I served the attached motion on the following counsel of record by regular U.S. mail, first-class, postage prepaid, and by electronic mail where indicated, addressed as follows:

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This the 23rd day of March, 2023.

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