

NO. 07-36056

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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GLEN SCOTT MILNER,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF THE NAVY,

Defendant-Appellee.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

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MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE  
BY ALLIED DAILY NEWSPAPERS OF WASHINGTON, ARIZONA  
NEWSPAPERS ASSOCIATION, CALIFORNIA NEWSPAPER  
PUBLISHERS ASSOCIATION, IDAHO NEWSPAPER ASSOCIATION,  
MONTANA NEWSPAPER ASSOCIATION, NEVADA PRESS  
ASSOCIATION, OREGON NEWSPAPER PUBLISHERS ASSOCIATION,  
WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, AND  
SOCIETY OF ENVIRONMENTAL JOURNALISTS

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## I. INTRODUCTION

Members of the news media serve as government watchdogs. The Freedom of Information Act (FOIA), 5 USC 552 et seq, is an important tool for keeping the public informed about government issues of concern. Movants are newspaper and journalist organizations with an urgent interest in protecting the vitality of FOIA so as to serve their watchdog role effectively. The panel's 2-1 decision in this case will block access to important government information by broadening FOIA Exemption 2. Because movants are interested parties who can offer an informed perspective about this case, the motion for leave to file a brief of amici curiae in support of en banc review should be granted.

## II. MOVANTS' INTEREST

### A. IDENTITIES OF MOVANTS.

#### 1. **Newspaper organizations.**

Allied Daily Newspapers of Washington is a trade association representing 25 daily newspapers across the state of Washington, while the Washington Newspaper Publishers Association represents 140 weekly community newspapers in the same state. The Arizona Newspapers Association is a trade group representing more than 100 large and small newspapers throughout the state of Arizona. The California Newspaper Publishers Association is a 121-year-old trade association with more than 800

daily, weekly and campus newspaper members. The Idaho Newspaper Association has 50 newspaper members throughout the state. The Montana Newspaper Association has 89 newspaper members. The Nevada Press Association is the trade organization for the newspaper industry in Nevada and California's Lake Tahoe area. The Oregon Newspaper Publishers Association is a trade association comprised of more than 100 daily and weekly paid-circulation newspapers.

All of these non-profit newspaper associations are dedicated, in part, to advocating for public access to government records. Their open government advocacy includes lobbying for, promoting understanding of, and supporting enforcement of federal and state sunshine laws.<sup>1</sup> For example, the associations co-sponsor hotlines for journalists to obtain legal help with open government issues.<sup>2</sup>

## **2. Journalist organization.**

The Society of Environmental Journalists (SEJ) is an international organization of more than 1,500 working journalists, educators and students dedicated to advancing public understanding of environmental issues by

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<sup>1</sup> See, e.g., <http://www.idahopapers.com/~ina/pub.html> (information about sunshine laws); <http://www.mtnewspapers.com/reporter/> (öFreedom of information is one of the critical concernsö); <http://web.mac.com/nevadapress/nevadapress.com/Welcome.html> (ödedicated to...furthering the public's right to knowö); <http://www.orenews.com/web/legal/index.php> (open government issues top the legislative agenda); [http://www.wnpa.com/brief\\_history/](http://www.wnpa.com/brief_history/) (describing Washington associations as advocates for open government).

<sup>2</sup> See, e.g., <http://www.ananews.com/memberservices/legal.html#media>.

improving the quality and visibility of environmental affairs reporting. Members work in a variety of mediums including television, radio and print. Public hazards, such as the munitions depot at issue in this case, are within the scope of SEJ members' reporting.

SEJ is distinctly *not* an environmental advocacy group. SEJ takes no positions on environmental topics but does do so on right-to-know and freedom-of-information issues. Members of SEJ regularly request government records as part of their news reporting. Since 2002, SEJ has maintained a First Amendment Task Force to advocate for the public's right to know about environmental concerns.<sup>3</sup>

#### B. INTEREST OF MOVANTS IN EN BANC REVIEW

Movants' interest in this case arises from the need for full and timely access to federal government records as a vital source of important news. As the public's watchdogs, movants have an urgent interest in properly applying FOIA to prevent agencies from escaping scrutiny.

Beyond the interests of their respective members, movants represent the voice of the public when advocating for every citizen's right to inspect non-exempt records to the fullest extent possible. The public relies heavily on the

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<sup>3</sup> <http://www.sej.org/initiatives/foia/overview>

news media for information about the government. Movants' reporting of important information will be hampered if, under the 2-1 panel's expanded reading of Exemption 2, virtually any records deemed to be potentially useful to hypothetical lawbreakers are placed out of reach. The records in this case, for example, are of strong public interest because they shed light on the federal government's handling of munitions which threaten public safety.

### III. REASONS WHY AN AMICUS BRIEF IS DESIRABLE

Movants represent most of the newspapers within the Ninth Circuit's jurisdiction, as well as individual print and broadcast journalists throughout the country.<sup>4</sup> Members of these organizations are among the most frequent requesters of government records. As such, they offer a well-informed perspective about the practical effects of broadening Exemption 2.

One question presented by the appellant's Petition for Rehearing En Banc is whether this case raises issues of exceptional public importance. An amicus brief from the news organizations is desirable partly because their members are closely in touch with what is important to the public. They are in the business of reporting information that the public wants to know, and regularly receive feedback from news consumers as to what is important. Also,

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<sup>4</sup> Alaska and Hawaii do not have statewide newspaper associations like the ones joining in this motion.

an amicus brief is desirable because the news organizations are frequent users of FOIA and therefore speak with experience and authority as to the importance of maintaining its vitality. The matters asserted in the brief of amici curiae are relevant to the disposition of the Petition for Rehearing En Banc because they explain the exceptional public importance of restoring Exemption 2 to its limited internal personnel scope.

#### V. CONCLUSION

For the foregoing reasons, this court should grant the motion for leave to file an amicus brief in support of appellant's Petition for Rehearing En Banc.

Dated this 21st day of September, 2009.

Respectfully submitted,

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