

No. 24-2765

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

P. POE 5, *ET AL.*,

*Plaintiffs-Appellees,*

v.

THE UNIVERSITY OF WASHINGTON AND ELIZA SAUNDERS,

*Defendants-Appellees,*

and

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC. AND NORTHWEST ANIMAL  
RIGHTS NETWORK,

*Intervenors-Defendants-Appellants.*

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On Appeal from the U.S. District Court for the  
Western District of Washington at Seattle  
Case No. 2:24-cv-00170-JHC (Hon. John H. Chun)

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**BRIEF OF AMICI CURIAE REPORTERS COMMITTEE FOR FREEDOM  
OF THE PRESS AND 12 MEDIA ORGANIZATIONS  
IN SUPPORT OF INTERVENORS-DEFENDANTS-APPELLANTS**

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## TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENTS.....	i
TABLE OF AUTHORITIES.....	iv
STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE .....	vii
SOURCE OF AUTHORITY TO FILE .....	ix
FED. R. APP. P. 29(a)(4)(E) STATEMENT .....	ix
INTRODUCTION.....	1
ARGUMENT .....	5
I. Analogous federal law supports public access to the makeup of the IACUC under the Act.....	5
A. FACA requires public disclosure of the identities of members of federal advisory committees.....	5
B. Public access to the composition of federal advisory committees helps limit private industry’s ability to unduly influence public policymaking.....	7
C. Transparency is more—not less—important for committees advising public institutions about controversial issues or subjects.....	10
CONCLUSION .....	12
APPENDIX A .....	14
CERTIFICATE OF SERVICE.....	19

## TABLE OF AUTHORITIES

### Cases

<i>Food Chem. News, Inc. v. Davis</i> , 378 F. Supp. 1048 (D.D.C. 1974).....	8
<i>N.Y. Times Co. v. Sullivan</i> , 376 U.S. 254 (1964) .....	1

### Statutes

5 U.S.C. § 552 .....	6
5 U.S.C.A. App. 2 § 10.....	6
Pub. L. No. 92-463, 86 Stat. 770 (1972) .....	5
Wash. Rev. Code § 42.56.030 .....	vii
Wash. Rev. Code §§ 42.56.001 et seq.....	vii

### Other Authorities

<i>Advisory Committee on Organ Transplantation: Committee Members</i> , FACA Database, <a href="https://perma.cc/XES4-WLQ6">https://perma.cc/XES4-WLQ6</a> (last accessed May 19, 2022).....	9
<i>Advisory Council on Blood Stem Cell Transplantation</i> , FACA Database, <a href="https://perma.cc/S5U7-U9QP">https://perma.cc/S5U7-U9QP</a> (last accessed May 19, 2022) .....	11
<i>Defense Advisory Committee on Diversity and Inclusion: Committee Members</i> , FACA Database, <a href="https://www.facadatabase.gov/FACA/s/meeting-members-advisory-reports?recordId=a10t0000009G1IyAAK">https://www.facadatabase.gov/FACA/s/meeting-members- advisory-reports?recordId=a10t0000009G1IyAAK</a> (last accessed May 17, 2024) .....	8
<i>Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces: Committee Members</i> , FACA Database, <a href="https://www.facadatabase.gov/FACA/s/meeting-members-advisory-reports?recordId=a10t0000001gzo5AAA">https://www.facadatabase.gov/FACA/s/meeting-members-advisory- reports?recordId=a10t0000001gzo5AAA</a> (last accessed May 17, 2024).....	9

David Grimm, <i>Animal care panel sues own university, fearing harassment from animal rights activists</i> , Science (Mar. 15, 2022), <a href="https://perma.cc/X476-UQYS">https://perma.cc/X476-UQYS</a> .....	2
<i>FACA Database</i> , U.S. General Services Administration, <a href="https://www.facadatabase.gov/FACA/s/account/Account/00Bt0000001I5GFEA0">https://www.facadatabase.gov/FACA/s/account/Account/00Bt0000001I5GFEA0</a> (last accessed May 17, 2024).....	6, 9
<i>Federal Advisory Committee Act (FACA): Committee Establishment and Termination</i> , Congressional Research Service (May 10, 2022), <a href="https://perma.cc/QP58-J6VB">https://perma.cc/QP58-J6VB</a> .....	10
<i>IACUC</i> , Office of Animal Welfare at University of Washington, <a href="https://perma.cc/GC6Q-KQRT">https://perma.cc/GC6Q-KQRT</a> (last accessed May 17, 2024) .....	1, 10
James L. Dean, <i>Memorandum for Committee Management Officers</i> , U.S. General Services Administration (Mar. 14, 2000), <a href="https://perma.cc/HL3D-YJXF">https://perma.cc/HL3D-YJXF</a> .....	6
Louis D. Brandeis, <i>Other People's Money</i> (1914) .....	12
<i>Membership: Overview</i> , USDA National Agricultural Library, <a href="https://perma.cc/9K9D-SVW8">https://perma.cc/9K9D-SVW8</a> (last accessed May 19, 2022).....	2
<i>National Environmental Justice Advisory Council</i> , FACA Database, <a href="https://www.facadatabase.gov/FACA/s/meeting-members-advisory-reports?recordId=a10t0000001gZrTAAQ">https://www.facadatabase.gov/FACA/s/meeting-members-advisory-reports?recordId=a10t0000001gZrTAAQ</a> (last accessed May 17, 2024).....	11
<i>National Security Commission on Artificial Intelligence</i> , FACA Database, <a href="https://perma.cc/F7XX-BD3N">https://perma.cc/F7XX-BD3N</a> (last accessed May 19, 2022) .....	11
Rachel Frazin, <i>International hunting council disbands amid litigation</i> , The Hill (Feb. 10, 2020), <a href="https://perma.cc/5FPF-Q7Q5">https://perma.cc/5FPF-Q7Q5</a> .....	6, 7

Rebecca J. Long & Thomas C. Beierle, <i>The Federal Advisory Committee Act and Public Participation in Environmental Policy</i> (1999), <a href="https://perma.cc/59GK-CBYQ">https://perma.cc/59GK-CBYQ</a> .....	12
S. Rep. No. 92-1098 (1972).....	7
Steven P. Croley & William F. Funk, <i>The Federal Advisory Committee Act and Good Government</i> , 14 Yale J. on Regul. 451 (1997).....	7
U.S. Gen. Accounting Off., GAO-04-328, <i>Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance</i> (2004) .....	11
<i>University of Washington’s Lethal Animal Use Violates Federal Law</i> , Physicians Committee for Responsible Medicine (June 3, 2019), <a href="https://perma.cc/C2MD-S536">https://perma.cc/C2MD-S536</a> .....	3
Zara Abrams, <i>U.S. Military Is Hiring Thousands of Psychologists to Help Reduce Sexual Assault</i> , Am. Psych. Ass’n (Mar 1, 2024), <a href="https://www.apa.org/monitor/2024/03/military-sexual-assault-prevention-efforts">https://www.apa.org/monitor/2024/03/military-sexual-assault-prevention-efforts</a> .....	9
<b>Regulations</b>	
9 C.F.R. § 2.31.....	2

## STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Amici are the Reporters Committee for Freedom of the Press, Californians Aware, First Amendment Coalition, The Media Institute, National Freedom of Information Coalition, National Press Club Journalism Institute, National Press Club, National Press Photographers Association, Radio Television Digital News Association, The Seattle Times Company, Society of Environmental Journalists, Society of Professional Journalists, and the Student Press Law Center (collectively “amici”). A supplemental statement of identity and interest of amici curiae is included below as Appendix A.

As members of the news media and organizations who advocate on behalf of journalists and the press, amici have a strong interest in safeguarding the right of access to records concerning public business embodied in Washington’s Public Records Act (the “Act”), Wash. Rev. Code §§ 42.56.001–42.56.904, and ensuring that any exemptions to the Act’s disclosure requirements are interpreted narrowly, Wash. Rev. Code § 42.56.030. Amici previously submitted two briefs to this Court making the same arguments contained herein. *See Sullivan v. Univ. of Wash.*, No. 22-35338, *Brief of Amici Curiae Reporters Comm. for Freedom of the Press & 16 Media Orgs. In Support of Intervenor-Appellant*, Dkt. Entry 14-2 (9th Cir. June 1, 2022); *Sullivan v. Univ. of Wash.*, No. 23-35313, *Brief of Amici Curiae Reporters Comm. for Freedom of the Press & 12 Media Orgs. In Support of*



*Intervenor-Appellant*, Dkt. Entry 12-2 (9th Cir. June 8, 2023). At present, the district court once again grounded its decision to reinstate a preliminary injunction in a constitutional right to informational privacy,<sup>1</sup> resulting in a prohibition on access to the identities of members of the University of Washington’s Institutional Animal Care and Use Committee (“IACUC”) under Washington’s Public Records Act. Accordingly, amici’s prior arguments continue to apply; thus, to ensure that the Court is able to consider the interests of news media in rendering its decision, amici write again to emphasize the importance of transparency regarding the makeup of public bodies that address issues of significant public concern.

Access to information about the identities of advisory committee members engaged in public business is not only critical to the news media’s ability to keep the public informed, but also serves to guard against private-industry capture of committees constituted to serve the public’s interests; such access allows the news media and the public to evaluate the credentials and affiliations of those making decisions about topics of public import and helps ensure that advisory committees are appropriately constituted.

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<sup>1</sup> The plaintiffs originally sought relief based upon a constitutional right of expressive association. *See Sullivan v. Univ. of Wash.*, No. 22-35338, *Opinion*, Dkt. Entry 48-1 (9th Cir. Feb. 17, 2023).

## **SOURCE OF AUTHORITY TO FILE**

Pursuant to Federal Rules of Appellate Procedure 27 and 29, amici have filed a motion for leave to file this amici curiae brief in support of Intervenor-Defendants-Appellants.

## **FED. R. APP. P. 29(a)(4)(E) STATEMENT**

Amici declare that:

1. no party's counsel authored the brief in whole or in part;
2. no party or party's counsel contributed money intended to fund preparing or submitting the brief; and
3. no person, other than amici, their members or their counsel, contributed money intended to fund preparing or submitting the brief.

## INTRODUCTION

A functioning system of self-governance depends on open debate among an informed public. Indeed, the Supreme Court has observed that a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open” is foundational to our democracy. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Undue limits on access to records related to the composition of committees with important roles in policymaking threaten the public’s ability to engage in informed debate; yet, the court below imposed such limits—to the detriment of the news media’s ability to help ensure that public bodies are transparent and accountable.

The Institutional Animal Care and Use Committee of the University of Washington (“IACUC” or the “Committee”) is responsible for the oversight of animal use at the University of Washington (the “University”), notably, with respect to animal testing. Its responsibilities include: “ensur[ing] compliance with federal regulations,” “[r]eview[ing] and approv[ing] . . . all proposed animal projects before they can begin,” “inspect[ing] animal facilities,” and performing a “[s]emi-annual review of the University’s animal program.” *IACUC*, Office of Animal Welfare at University of Washington, <https://perma.cc/GC6Q-KQRT> (last accessed May 17, 2024). The IACUC deliberates about animal care and conditions at the University on a monthly basis. *Id.* Under the regulations implementing the

Animal Welfare Act, 9 C.F.R. § 2.31, Office of Laboratory Animal Welfare (“OLAW”) assured IACUCs must have five or more members, including at least one nonscientist and one person unaffiliated with the institution “to provide representation for general community interests in the proper care and treatment of animals.” *Membership: Overview*, USDA National Agricultural Library, <https://perma.cc/9K9D-SVW8> (last accessed May 19, 2022). The membership requirements are meant to ensure that any decisions made about animal use reflect balanced perspectives, such that “animals are properly cared for and only necessary experiments take place.” David Grimm, *Animal care panel sues own university, fearing harassment from animal rights activists*, *Science* (Mar. 15, 2022), <https://perma.cc/X476-UQYS>. Members of the IACUC of the University are currently identified only by their initials. ER-4.

On or about June 24, 2021, the People for the Ethical Treatment of Animals (“PETA”) filed a public records request with the University of Washington under Washington’s Public Records Act. ER-612. The request asked for “copies of all of the Institutional Animal Care and Use Committee appointment letters that institutional officials have created or produced” from “the period from Jan[.] 1, 2014, to the present.” *Id.* Through the appointment letters, PETA sought to learn the identities of the IACUC members to both confirm their credentials and determine whether the IACUC was legally constituted—an effort motivated by

PETA’s concern that the IACUC is overwhelmingly aligned with research interests. *University of Washington’s Lethal Animal Use Violates Federal Law*, Physicians Committee for Responsible Medicine (June 3, 2019), <https://perma.cc/C2MD-S536>.

On February 22, 2022, Plaintiffs-Appellees moved for a temporary restraining order (“TRO”) and a preliminary injunction against Defendants-Appellees seeking to bar disclosure of the appointment letters. *See Sullivan*, 2022 WL 558219, at \*2. The district court granted the TRO on February 24, 2022 and entered the preliminary injunction shortly thereafter. *See id.* PETA appealed. *See ER-582*. On February 17, 2023, this Court reversed the district court’s preliminary injunction prohibiting the University from releasing the letters appointing the plaintiffs to the University’s IACUC. Specifically, this Court ruled that in performing their work on the committee, the members were not engaged in an association deemed to be “expressive” under Supreme Court or Ninth Circuit precedent, so the First Amendment right of expressive association was not implicated by the University’s disclosure of identifying information contained in their letters of appointment. *Sullivan v. Univ. of Wash.*, 60 F.4th 574 (9th Cir. 2023). Subsequently, Plaintiffs-Appellees moved for another preliminary injunction based on a claimed constitutional right to bodily integrity and

informational privacy, which this Court denied on standing grounds. *Sullivan v. Univ. of Wash.*, No. 23-35313, 2023 WL 8621992, at \*1 (9th Cir. Dec. 13, 2023).

Meanwhile, PETA and Northwest Animal Rights Network submitted additional records requests to the University concerning its sale and treatment of nonhuman primates, ER-575–76—requests that Plaintiffs-Appellees claim would require disclosure of their identities if fulfilled, ER-3. Thus, Plaintiffs-Appellees initiated a new lawsuit seeking to, again, enjoin the University from disclosing the IACUC’s membership. *Id.* In its most recent order granting Plaintiffs-Appellees a preliminary injunction, the district court suggests that “the degree of need for public access to the specific information at issue here is relatively low.” ER-15. But federal law—specifically, statutory authorities like the Federal Advisory Committee Act (“FACA”)—supports the opposite conclusion. In the analogous federal context, transparency—including about the makeup of policymaking and advisory committees—has long been recognized as serving not only as an important check on public institutions, but also as a necessary mechanism for ensuring that committees tasked with making policy decisions or providing policy advice, particularly about controversial topics of public concern, are viewed as legitimate by the public.

Amici write to highlight for the Court the steps Congress has taken to mandate transparency with respect to similarly situated committees at the federal

level, and to urge the Court to reverse and vacate the district court’s preliminary injunction barring the disclosure of IACUC members’ appointment letters under Washington’s Public Records Act.

## ARGUMENT

### **I. Analogous federal law supports public access to the makeup of the IACUC under the Act.**

#### **A. FACA requires public disclosure of the identities of members of federal advisory committees.**

The district court suggests that federal regulation obviates the need for public access to the IACUC members’ appointment letters under the Washington Public Records Act. ER-15 (“While government accountability is an important interest, there are already many ways that the public can hold the UW IACUC accountable . . . .”). In this, the district court is mistaken. As a general matter, the Act requires disclosure of the requested records, *see, e.g.*, Intervenor-Defendants-Appellants’ Br. at 17–20, regardless of the existence—or lack thereof—of a federal oversight scheme. But, in any event, federal regulation is no substitute for public transparency, as federal statutes like the Federal Advisory Committee Act, Pub. L. No. 92-463, 86 Stat. 770 (1972) (“FACA”), which require robust transparency for advisory committees at the federal level, make clear.

In enacting FACA to standardize regulations governing advisory committees at the federal level, Congress intentionally created a statutory scheme that mandates transparency about the government’s relationship with outside advisors

and consultants. Section 10(b) of FACA expressly requires that, subject to the parameters of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, all “records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents” used or prepared by federal advisory committees must be made available to the public. 5 U.S.C.A. App. 2 § 10(b). The purpose of section 10(b) of FACA is to provide for the “contemporaneous availability of advisory committee records that . . . provide[s] a meaningful opportunity to fully comprehend the work undertaken by the committee.” James L. Dean, *Memorandum for Committee Management Officers*, U.S. General Services Administration (Mar. 14, 2000), <https://perma.cc/HL3D-YJXF>.

From this landscape of transparency emerged the FACA Database in 1988. *FACA Database*, U.S. General Services Administration, <https://www.facadatabase.gov/FACA/s/account/Account/00Bt0000001I5GFEA0> (last accessed May 17, 2024). Maintained by the General Services Administration (“GSA”), the FACA Database contains comprehensive information about federal advisory committees, including committee charters, budgets, meeting reports—and, notably, membership rosters. *See id.* Each of the 1,000 or so federal advisory committees is responsible for providing accurate and timely data about its official conduct, *see id.*, which allows Congress, the public, and members of the news media to exercise valuable oversight of advisory committees. *See, e.g.,* Rachel



Frazin, *International hunting council disbands amid litigation*, The Hill (Feb. 10, 2020), <https://perma.cc/5FPF-Q7Q5> (discussing the International Wildlife Conservation Council disbanding after conservationists and animal rights activists filed a lawsuit arguing that the committee had a disproportionate number of pro-hunting advisors, contrary to federal law).

B. Public access to committee members' identities helps limit private industry undue influence over public policymaking.

FACA was enacted in part to address concerns that special interests had captured advisory committees and were consequently exerting undue influence over public programs. Steven P. Croley & William F. Funk, *The Federal Advisory Committee Act and Good Government*, 14 Yale J. on Regul. 451, 453 (1997). Accordingly, beyond establishing regulations for advisory committees, Congress also deemed it vital to include provisions for public access within FACA to guard against unchecked private industry influence.

Senate testimony leading up to the passage of FACA noted “a tendency among advisory committees to operate in closed environments, permitting little opportunity for the public to be informed of their deliberations and recommendations, and of the materials and information on which they rely.” S. Rep. No. 92-1098, at 6 (1972). Senators cautioned against the “danger that subjective influences not in the public interest could be exerted on the Federal decision-makers” in such secrecy. *Id.*

This legislative history makes clear that Congress did not view regulation as a substitute for transparency. To the contrary, it recognized the importance of empowering the public with access to information that would enable effective scrutiny of advisory committees, including the involvement of private business interests, and ultimately improve the advisory committee process. *See Food Chem. News, Inc. v. Davis*, 378 F. Supp. 1048, 1051 (D.D.C. 1974) (“The purpose of the Federal Advisory Committee Act [is] to control the advisory committee process and to *open to public scrutiny* the manner in which government agencies obtain advice from private individuals . . . .” (emphasis added)).

That the identities of federal advisory committee members have been published in the FACA Database for more than thirty years is instructive. For example, any interested person can easily obtain a list of the current members of the Department of Defense Advisory Committee on Diversity and Inclusion, along with their respective affiliations. *Defense Advisory Committee on Diversity and Inclusion: Committee Members*, FACA Database, <https://www.facadatabase.gov/FACA/s/meeting-members-advisory-reports?recordId=a10t0000009G1IyAAK> (last accessed May 17, 2024). The same degree of transparency applies to committees that deal with sensitive topics. For instance, one can obtain the identities of the members of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the

Armed Forces, even as there persists acute frustration toward Departmental leadership about rates of sexual assault in the U.S. military.<sup>2</sup> *Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces: Committee Members*, FACA Database, <https://www.facadatabase.gov/FACA/s/meeting-members-advisory-reports?recordId=a10t0000001gzo5AAA> (last accessed May 17, 2024); *see also Advisory Committee on Organ Transplantation: Committee Members*, FACA Database, <https://perma.cc/XES4-WLQ6> (last accessed May 19, 2022) (reflecting organ transplantation committee members despite robust disagreement and debate over the topic of organ transplants). Indeed, the inclusion of names and affiliations in the FACA Database of committee members advising about not only the above-mentioned topics but also about issues concerning animals, climate, the justice system, and more, *see FACA Database, supra*, makes clear that, at the federal level, when individuals opt to serve in an advising capacity to a government entity, they should expect their identities to be public.

The same public policy considerations underlying the public access provisions in FACA apply to the IACUC. As a policymaking body established pursuant to federal law, and composed of private individuals serving in an advisory

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<sup>2</sup> *See, e.g.,* Zara Abrams, *U.S. Military Is Hiring Thousands of Psychologists to Help Reduce Sexual Assault*, Am. Psych. Ass'n (Mar 1, 2024), <https://www.apa.org/monitor/2024/03/military-sexual-assault-prevention-efforts>.

capacity, the IACUC deals with important issues around animal use. *See IACUC, Office of Animal Welfare at University of Washington, supra*. Indeed, given the IACUC’s position as the primary oversight body on animal use at the University, it is vital that its membership roster be made available to the public, so that individuals can scrutinize members’ qualifications and affiliations, and assure themselves that IACUC decisions are not being disproportionately influenced by private industry interests behind closed doors.

C. Transparency is more—not less—important for committees advising public institutions about controversial issues or subjects.

Plaintiffs-Appellees suggest that the controversial nature of IACUC’s policymaking around animal testing precludes disclosure of its membership. *See, e.g., ER-509–16*. Again, this argument is undercut by the highly transparent, analogous federal framework outlined above: even those federal advisory committees focused on highly divisive, controversial issues are subject to the transparency requirements of FACA. Indeed, federal advisory committees are often specifically established to address controversial issues like stem cell research and artificial intelligence precisely because advisory committees are particularly beneficial when they tackle topics about which there is significant public disagreement. *Federal Advisory Committee Act (FACA): Committee Establishment and Termination*, Congressional Research Service (May 10, 2022), <https://perma.cc/QP58-J6VB> (“Establishing an advisory committee may also allow

the federal government to provide a forum where potentially controversial topics may be discussed by experts outside the political arena . . .”). And, as explained above, such federal advisory committees routinely publish their membership rosters online. *See, e.g., National Environmental Justice Advisory Council*, FACA Database, <https://www.facadatabase.gov/FACA/s/meeting-members-advisory-reports?recordId=a10t0000001g zrTAAQ> (last accessed May 17, 2024); *National Security Commission on Artificial Intelligence*, FACA Database, <https://perma.cc/F7XX-BD3N> (last accessed May 19, 2022); *Advisory Council on Blood Stem Cell Transplantation*, FACA Database, <https://perma.cc/S5U7-U9QP> (last accessed May 19, 2022).

Promoting transparency and public access to information about the composition of these committees “c[an] reduce the likelihood that committees are, or are perceived as being, biased or imbalanced.” U.S. Gen. Accounting Off., GAO-04-328, *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance* (2004). “[I]t is important that committees are perceived as balanced in order for their advice to be credible and effective,” *especially* when they deal with controversial matters. *Id.* at 5. As such, “FACA’s balance and openness provisions help to promote external trust by ensuring that interested parties are able to gain access to the discussions and/or material on which an advisory committees’ policy recommendations are based.”

Rebecca J. Long & Thomas C. Beierle, *The Federal Advisory Committee Act and Public Participation in Environmental Policy* 35 (1999), <https://perma.cc/59GK-CBYQ>.

These same considerations are applicable here. That the IACUC works on controversial issues over which segments of the public may disagree, even vehemently, is not a reason to exempt it from the transparency mandates of the Washington Public Records Act. To the contrary, it is all the more reason to ensure robust public access to information about the IACUC, including its membership—the same kind of transparency that has existed at the federal level for decades.

## CONCLUSION

As Justice Louis Brandeis famously noted, “[s]unlight is said to be the best of disinfectants,” Louis D. Brandeis, *Other People’s Money* 92 (1914). The best method for ensuring that the IACUC is balanced and properly constituted is to have robust, meaningful public access to information—not only about the IACUC’s decisions but also of the identities of its members. When a committee advising a public institution deals with controversial, newsworthy issues of significant public concern, transparency is necessary for public trust, the perception of legitimacy, and to ensure meaningful accountability.

For the foregoing reasons, amici respectfully urge the Court to reverse and vacate the district court's preliminary injunction.

Dated: June 5, 2024

Respectfully submitted,

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## APPENDIX A

### SUPPLEMENTAL STATEMENTS OF IDENTITY OF AMICI CURIAE

**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.

**Californians Aware** is a nonpartisan nonprofit corporation organized under the laws of California and eligible for tax exempt contributions as a 501(c)(3) charity pursuant to the Internal Revenue Code. Its mission is to foster the improvement of, compliance with, and public understanding and use of, the California Public Records Act and other guarantees of the public's rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss.

**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.

**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** 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 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 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.

**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.

**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.

## CERTIFICATE OF SERVICE

I, Katie Townsend, do hereby certify that I have filed the foregoing Brief of Amici Curiae electronically with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on June 5, 2024.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Katie Townsend  
Katie Townsend  
*Counsel of Record for Amici Curiae*  
REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 8. Certificate of Compliance for Briefs**

**9th Cir. Case Number(s):** 24-2765

I am the attorney for amici curiae the Reporters Committee for Freedom of the Press and 12 media organizations.

**This brief contains 3,429 words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

complies with the word limit of Cir. R. 32-1.

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is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

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**Signature** /s/ Katie Townsend **Date** June 5, 2024