UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| AMNESTY INTERNATIONAL USA, GLOBAL FUND FOR WOMEN, GLOBAL RIGHTS, HUMAN RIGHTS WATCH, INTERNATIONAL CRIMINAL DEFENCE ATTORNEYS ASSOCIATION, THE NATION MAGAZINE, PEN AMERICAN CENTER, SERVICE EMPLOYEES INTERNATIONAL UNION, WASHINGTON OFFICE ON LATIN AMERICA, DANIEL N. ARSHACK, DAVID NEVIN, SCOTT MCKAY, AND SYLVIA ROYCE, | : | ECF CASE |
| Plaintiffs, | : | 08-Civ.6259 (JGK) |
| v. | : | |
| JOHN M. McCONNELL, in his official capacity as Director of National Intelligence, LT. GEN. KEITH B. ALEXANDER, in his official capacity as Director of the National Security Agency and Chief of the Central Security Service, and MICHAEL B. MUKASEY, in his Official capacity as Attorney General of the United States | : | |
| Defendants. | : | |

**BRIEF *AMICUS CURIAE* OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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Date: December 19, 2008

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## STATEMENT OF INTEREST

The Reporters Committee for Freedom of the Press ("the Reporters Committee") is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and freedom of information litigation in state and federal courts since 1970. The interest of *Amicus* in this case is in ensuring that the First Amendment rights of journalists to interview international sources are upheld.

## SUMMARY OF ARGUMENT

The FISA Amendments Act of 2008 ("FAA") violates those rights. The FAA has amended the Foreign Intelligence Surveillance Act ("FISA") to change the procedure for the government's interception and acquisition of telephone and email communications between U.S. citizens and people abroad. The new law allows the Attorney General and the Director of National Intelligence to immediately intercept communications without seeking court approval or showing cause or suspicion, as long as the communication is "important to the national security of the United States" and may be lost if not collected immediately. FAA §702 (c)(2), codified at 50 U.S.C. §1881a (c)(2) (2008) ("§1881a"). The law requires that the government submit a certification to the Foreign Intelligence Surveillance Court ("FISC") within seven days after monitoring the communication, but that certification does not have to state who, where, or why the government is monitoring. §1881a (g)(1)(B),(g)(4). If the FISC rejects the government's certification, the government can still continue intercepting communications while an appeal of the FISC decision is pending. §1881a (i)(4)(B). Essentially, the FAA gives the government broad authority to listen to communications between U.S. citizens and people

abroad, putting a large number of journalists who frequently conduct interviews with international sources at risk of interception. By authorizing interception without requiring judicial review, the FISC may never know if and when the government is using its powers under the FAA to monitor journalists' communications.

The FAA undermines the constitutionally-protected role of the press as a watchdog on government action and eliminates the ability of journalists to make good-faith promises of confidentiality to international sources. The government's ability to conduct wiretapping with no suspicion or warrant via the FAA has disastrous results for the news media and by extension the public. By destroying confidential relationships between journalists and their sources, the law prevents journalists who cover foreign and national security issues from investigating important news stories. The FAA severely harms journalists' abilities to perform their duties to gather and disseminate the news, and it violates their First Amendment rights. Thus, the law is unconstitutional.

## ARGUMENT

### I. The FISA Amendments Act of 2008 undermines the well-established First Amendment role of the press as a watchdog.

A free press is vital in a democracy. It serves as a watchdog of the executive, legislative, and judicial branches and keeps the public informed. Courts have long recognized that the press has constitutional protection to perform this watchdog function. But the FAA undermines the press's constitutionally protected role, making it nearly impossible for journalists to unearth information important to the public interest.

Throughout American history, the watchdog role of the press has been constitutionally recognized. As Justice Black acknowledged in *New York Times v. United States* (the "Pentagon Papers" case):

> In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.

403 U.S. 713, 717 (1971). From the early days of pamphleteers to today's multi-national media corporations, the press has long been considered vital to the system of checks and balances in a democracy. "[T]he press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve." *Mills v. Alabama*, 384 U.S. 214, 219 (1966). Justice Potter Stewart wrote about the importance of the press in a free society. "The primary purpose of the constitutional guarantee of a free press was … to create a fourth institution outside the Government as an additional check on the three official branches." Potter Stewart, *Or of the Press*, 26 Hastings L.J. 631, 634 (1975).

In a recent war tribunal prosecution in The Hague, the International Criminal Tribunal for the Former Yugoslavia recognized the watchdog role of the news media when it adopted a qualified reporter's privilege for war correspondents. *Prosecutor v. Brdjanin* Case No.: IT-99-36-AR73.9, Decision on Interlocutory Appeal, (Dec. 11, 2002), *available at* http://www.un.org/icty/brdjanin/appeal/decision-e/randall021211.htm. During the prosecution of former Bosnian Serb Deputy Prime Minister Radoslav Brdjanin, the prosecutor sought the testimony of a former *Washington Post* reporter, Jonathan Randal, who had interviewed Brdjanin for a 1993 story. Though Randal's article contained no confidential information or sources, the tribunal still held that compelling him to testify would damage the ability of war correspondents to gather news. The tribunal recognized the vital role that war correspondents play in making

public information about the conflict zone. "In war zones, accurate information is often difficult to obtain and may be difficult to distribute or disseminate as well. The transmission of that information is essential to keeping the international public informed about matters of life and death." *Id.* at ¶36. In order to bring this information to the public, the court wrote that: "[w]ar correspondents must be perceived as independent observers rather than as potential witnesses for the Prosecution. Otherwise, they may face more frequent and grievous threats to their safety and to the safety of their sources." *Id.* at ¶42.

Likewise, journalists covering today's "war on terror" play the same essential role that the tribunal recognized of war correspondents and should be given the same protection. There is a substantial public interest in learning information about matters that affect the safety of the United States and its role in combating terrorism. In order to unearth important information about these matters and to perform its function as a watchdog on the government, reporters covering the "war on terror" must be able to act independently. "Protecting the free flow of information and countering undue government secrecy are essential underpinnings, not only of individual freedom, but also of our whole government system of checks and balances. A free press that has access to, and the right to publish information about executive branch policies, is a critical pillar of both congressional oversight and judicial review." Nadine Strossen, *Constitutional Overview of Post-9/11 Barriers to Free Speech and a Free Press*, 57 Am. U. Law. Rev. 1204,1209 (2007). A free and non-government controlled press is able to publish important stories that affect daily lives. During the Vietnam War era, it was the news media that publicized the government's involvement in the war with *The New York Times*' publication of the Pentagon Papers. Neil Sheehan, *Vietnam Archive: Pentagon Study Traces 3 Decades of Growing U.S. Involvement*, N.Y. Times, June 13, 1971, at A1. More recently, the media's coverage of the "war

on terror" has provided the public with accurate accounts of the government's involvement in the Middle East. *The New York Times* recently obtained from a confidential source a government report that highlights mistakes the United States concedes it made in Iraq. James Glanz and T. Christian Miller, *Official History Spotlights Iraq Rebuilding Blunders*, N.Y. Times, Dec. 13, 2008, at A1. These stories are of utmost importance and illustrate the news media's role as a watchdog. But stories like these could only be published because the press acted free from government interference.

The FAA intrudes upon the constitutionally protected role of the news media and makes it nearly impossible for the press to perform its constitutional duty. By granting the government the power to monitor conversations between journalists and sources without any meaningful judicial supervision, the FAA allows the government to utilize the press as an investigatory arm. Without the journalists' or sources' knowledge, government investigators can latch on to journalists, listen to them conduct interviews, and use everything the journalists learn in any terrorism investigation. In order to act as a watchdog, the news media must remain independent from the government. Journalists cannot be expected to give information to prosecutors if it compromises their ability to work independently. The FAA destroys a journalist's ability to be autonomous by gathering news without government interference.

The government's engagement in warrantless wiretapping signals to the public that the government does not acknowledge the news media's role as a watchdog, but instead sees it as another tool in the "war on terror", and therefore a *de facto* agent of the government. This damages the credibility of the press with the public, which in turn chills the speech of sources who do not want to speak to a compromised news media.

## II. The FISA Amendments Act of 2008 violates the constitutional rights of journalists to gather news by forming protected source relationships.

The relationship between a journalist and a source is of fundamental importance. Journalists and sources work together to unearth important information that the public would otherwise not learn. The FAA destroys that relationship. It makes it nearly impossible for journalists to make good-faith promises of confidentiality to international sources because there is always a risk of government interception. This limits the news reporting and violates journalists' First Amendment rights of freedom of association.

### A. The FISA Amendments Act of 2008 directly interferes with reporter-source relations by eliminating the ability of journalists to promise confidentiality.

Some of the most flagrant examples of government misconduct have become public because of investigative journalists who relied on confidential sources. From the Watergate scandal leading to the resignation of President Richard Nixon to the photographs from Iraq's Abu Ghraib prison, which raised legal and ethical questions about the government's use of torture on detainees, scores of important stories about government operations relied on confidential sources. Even the revelation of the National Security Agency's ("NSA") secret wiretapping program, the pre-cursor to the FAA, was revealed because of confidential sources who communicated with *The New York Times* in 2005. James Risen and Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. Times, Dec. 16, 2005, at A1.

Before the NSA program was revealed, journalists feared that the U.S. government would eavesdrop on communications with international sources. Now that the FAA has been signed into law, with no safeguards for the First Amendment rights of journalists, that fear has become fact. It has become public knowledge that the government has listened in on the phone conversations of journalists, aid workers and members of the U.S. military. Scott Shane, *Panel*

*to Study Military Eavesdropping*, N.Y. Times, Oct. 9, 2008, at A18. Indeed, two former military intelligence officers this fall exposed the depth of the government's spying program when they disclosed they had listened to private conversations of U.S. citizens that had nothing to do with national security. *Id*. Under the NSA's prior warrantless wiretapping program, the government could monitor communications if it found that one party was associated with al-Qaeda. But under the FAA, there is no limit to what the government can listen in on if it can be considered important to national security. Thus, it is not merely possible, but likely, that journalists covering national security issues will be monitored when they speak with international sources.

Journalists in the United States consider keeping a source's identity confidential a fundamental tenet of the profession. The FAA makes it nearly impossible for a journalist to make a good-faith promise of confidentiality to a source, impinging upon how a journalist conducts his or her job. Now, when an international source asks a U.S. journalist to protect his or her identity while the two are having a phone or email conversation, the journalist can no longer honestly promise that the conversation will be private. If a journalist acts in good faith by acknowledging to the source that their communications might not be kept secret from the government, there is a strong likelihood that the source will not speak to the journalist and the story will go undisclosed and unreported.

Throughout history, journalists have gone to great lengths to protect confidential speech. American journalist John Peter Zenger went to jail for eight months in 1735 on seditious libel charges after he refused to identify the author of an article that criticized the governor of New York. *See* Garrett Epps, *An American Cato Defends Criticism of the Government*, in The First Amendment Freedom of the Press: Its Constitutional History and Contemporary Debate 46, 47 (2008). In 1896, a Baltimore Sun reporter spent two days in jail after refusing to reveal to a

grand jury a confidential source he used to report on a public corruption investigation. His jail time sparked Maryland to become the first state in the union to pass a shield law to protect confidential sources. *See Commentary: U.S. Senate Should Still Pass the Shield Law*, The Daily Record, Sept. 2, 2008, *available at* http://findarticles.com/p/articles/mi_qn4183/is_20080902/ai_n2805 7456. During the civil rights movement in the 1960s and 70s, several reporters covering the emerging drug culture and race relationships were held in contempt when they refused to reveal confidential sources.[1] More recently, a television reporter in Rhode Island who reported on a bribe taken by the mayor of Providence was sentenced to six months of home confinement when he refused to reveal a confidential source. *Taricani ordered confined to home on criminal contempt charge, Reporters Committee*, Dec. 9, 2004, *available at* http://www.rcfp.org/news/2004/1209inresp.html. But with the enactment of the FAA, the ability to protect the confidentiality of a source is taken out of both the journalists' and the sources' hands and is placed with the U.S. government.

For many sources, the decision to speak to the news media poses serious risks. Many foreign governments punish those who speak out against their country, even though that speech would be protected under U.S. law. Under the Iraqi criminal code, anyone "who publicly insults" a government official, government program or the armed forces can be sent to jail for seven years." Iraqi Penal Code, 3rd ed. Ch. 3 §1:225-226 (last verified as of 2006). Speaking against any foreign government or a corporation with an Iraq office carries a penalty of a two-year jail sentence. *See also*, Paul von Zielbauer, *Iraq Journalists Add Laws to List of Dangers*, N.Y. Times, Sept. 29, 2006, at A12. Likewise, Algeria and Egypt also have laws that mandate a prison sentence for defaming government officials. *See* British Broadcasting Corporation, Country Profiles, http://news.bbc.co.uk/2/hi/country_profiles/default.stm (Dec. 2008). Criticism

[1] Three of these cases were decided by the U.S. Supreme Court as *Branzburg v. Hayes*, 408 U.S. 665 (1972).

of government officials is banned in Saudi Arabia, Syria and Bahrain. *Id.* In Zimbabwe, journalists are required to register with the government and there are criminal punishments for failure to do so. *Id.* A *New York Times* reporter was jailed in Zimbabwe in April 2008 for the crime of "committing journalism." Barry Bearak, *In Zimbabwe Jail: A Reporter's Ordeal,* N.Y. Times, April 27, 2008 at A1. According to the Committee to Protect Journalists, 125 journalists worldwide were imprisoned and 41 were killed in 2008 alone, highlighting the dangers associated with reporting in many regions of the world. Committee to Protect Journalists, *Annual Prison Census*, Dec. 1, 2008, http://www.cpj.org/imprisoned/2008.php; *Journalists Killed in 2008: 41 Confirmed*, Dec. 14, 2008, http://www.cpj.org/deadly/2008.php.

Sources and journalists in countries with restrictive speech laws such as these have a legitimate fear of speaking. Under the FAA, once a communication is intercepted there is no way of knowing where that information will end up. If other countries' governments become aware of someone speaking out to the American media, there could be serious ramifications for the speaker. For sources, the chance that their identities will be revealed is often such a big risk they avoid coming forward or providing important information unless they can be assured confidentiality. For journalists, who must often conduct interviews over the phone or by email, this severely limits the information they can obtain through sources. The FAA creates a losing situation for both parties because it prevents journalists and sources from communicating openly and honestly, without putting their lives and livelihood in danger. This inability of a journalist to promise confidentiality and the source's fear of government surveillance chills speech that is protected by the First Amendment.

**B. The courts have long-recognized the importance of confidentiality in newsgathering in a manner that is inconsistent with the FISA Amendments Act of 2008.**

Acknowledging the importance of confidentiality in newsgathering, nearly every state provides a reporter's privilege, either through statute or common law, to allow reporters to keep the identities of their confidential sources secret. The Reporters Committee for Freedom of the Press, *Reporter's Privilege Compendium*, *available at* http://www.rcfp.org/privilege/ (last updated 2008). Most federal circuits, including the Second Circuit, recognize a qualified reporter's privilege that protects confidential sources and information.[2] The privilege "reflect[s] a paramount public interest in the maintenance of a vigorous, aggressive and independent press capable of participating in robust, unfettered debate over controversial matters, an interest which has always been a principal concern of the First Amendment." *Baker v. F & F Invest.*, 470 F.2d 778, 782 (2d Cir. 1972) (holding that a reporter did not have to testify about his confidential sources in a civil rights action). "The damage caused by the required revelation of confidential information is obvious: if sources fear that their identities will be readily subject to exposure, they will be less likely to provide information to journalists and the press's ability to perform its constitutionally protected function will be compromised." *Lonegan v. Hasty*, No. 04 Civ. 2743, 2008 WL 41445, at 2 (E.D.N.Y. Jan. 1, 2008) (citations omitted).

Because of the important constitutional issues at stake, courts play an essential role in protecting the reporter-source relationship. That role will be gutted by the FAA. Many of the federal circuits, including the Second Circuit, recognize a reporter's privilege subject to a balancing test. Courts do not always find that the balancing test favors confidentiality. But even

[2] The test applied in the Second Circuit is that the party seeking the evidence must show that the information is "highly material and relevant, necessary or critical to the maintenance of the claim, and not obtainable from other available sources." *New York Times v. Gonzales,* 458 F.3d at 176 (citing *In re Petroleum Prods. Antitrust Litigation*, 680 F.2d 5, 7 (2d Cir. 1982).

in such cases, like the recent high-profile one involving a subpoena to *The New York Times* reporter Judith Miller, courts have recognized the vital role the judiciary plays in balancing the interests at stake. "The executive branch possesses no special expertise that would justify judicial deference to prosecutors' judgments about the relative magnitude of First Amendment interests. Assessing those interests traditionally falls within the competence of courts." *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141, 1175 (D.C. Cir. 2006). In *New York Times v. Gonzales*, the Second Circuit held that the reporter's privilege to protect confidential sources extends to a reporter's telephone records in possession of a third-party telephone provider. 459 F.3d 160 (2d Cir. 2006). In that case, the government subpoenaed phone companies for telephone records of two *Times* reporters who interviewed people from organizations under investigation for allegedly funding terrorism. Though on the specific facts of that case, the court held that the government had met its burden to prove that the qualified privilege was overcome, the court clearly indicated that telephone records of a reporter generally are subject to the Second Circuit's balancing test. "Without question, the telephone is an essential tool of modern journalism and plays an integral role in the collection of information by reporters." *Id.* at 168.

As the dissenting judge pointed out in *New York Times*, the central issue in the case was not whether a privilege exists (because the majority agreed that it does), but "which branch of government decides whether, when, and how any such protection is overcome." *Id.* at 175.

> The Court's decision also confirms the ability of journalists to protect the identities of their sources in the hands of third-party communications-service-providers… Without such protection, prosecutors, limited only by their own self-restraint, could obtain records that identify journalists' confidential sources in gross and virtually at will…. Ordinary use of the telephone could become a threat to journalist and source alike. It is difficult to see in whose best interest such a regime would operate.

*Id.* at 175. (Sack, J., dissenting).

Quite recently, the Second Circuit reiterated the importance of judicial scrutiny of government action in the name of national security that implicates First Amendment rights. In *Doe v. Mukasey*, the court assessed the constitutionality of a statute that allowed the FBI to forbid national security letter recipients from publicly discussing FBI records demands and narrowly limited judicial review of those gag orders. In holding the statute violated the First Amendment, the court acknowledged that when it comes to speech, it is the judicial branch, and not the executive, that must ultimately decide whether the government's actions are justified. "The fiat of a government official, though senior in rank and doubtless honorable in the execution of official duties, cannot displace the judicial obligation to enforce constitutional requirements." No. 07 Civ. 4943, 2008 WL 5205951, at *16 (2d Cir. Dec. 15, 2008).

The FAA, however, allows the executive branch to intercept communications between a journalist and international source without a court first judging the need for protection of the source's identity. Because the government never has to specify who, where, or why it is monitoring communications, the FISC may never know when conversations between a journalist and an international source are intercepted, thus denying it the opportunity to weigh the First Amendment rights at stake. The role of the courts is to ensure protection of constitutional rights. When it comes to upholding the fundamental rights of freedom of speech and of the press, it is exceptionally important that the judicial branch balance the interests at stake. The FAA, however, allows the government to trample journalists' constitutional rights without any judicial oversight.

### C. The FISA Amendments Act of 2008 violates the First Amendment rights to freedom of association and anonymous speech by forcing disclosure of journalists' sources.

The U.S. Supreme Court has made clear that freedom of association is a fundamental right protected by the First Amendment and requiring disclosure of one's associations violates that right. In *NAACP v. Alabama*, the Court held unconstitutional a court order that required the NAACP to disclose its membership list. 357 U.S. 449 (1958) (holding that laws which require a group to disclose members of its association must meet strict scrutiny). The Court acknowledged that the revelation of the identity of NAACP members in the past "has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." *Id*. at 462. In recognizing this past harm, the Court held that to require disclosure of the group members' identities would prevent the members from continuing to express their beliefs, and would dissuade people from joining the NAACP in the future. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty'." *Id*. at 460.

The right of association extends to individuals as well as organizations. Journalists, like all American citizens, have a First Amendment right to associate with others. Included in this right is the freedom not to disclose those associations with the government. "This Court has recognized the vital relationship between freedom to associate and privacy in one's associations." *Id.* at 462. Just like the order in *NAACP* forced the disclosure of people who believe in *NAACP* ideals, the FAA forces disclosure of the sources and of the journalists who associate with them because they are speaking about topics related to national security and terrorism.

In a similar line of cases dealing with anonymous speech, the Supreme Court relied on *NAACP* to strike down on First Amendment grounds ordinances that required the disclosure of speakers' identities based on their viewpoints. In *Tally v. California*, the court held unconstitutional a statute requiring that handbills bear the name of the person responsible for its distribution. The Court upheld *NAACP* and stated that "identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance." *Tally v. California*, 362 U.S. 60, 65 (1960). More recently, the Court struck down a statute prohibiting the distribution of anonymous campaign materials, *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995) and a statute requiring door-to-door solicitors to wear identification badges, *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999). These cases make clear that the First Amendment right of association encompasses the right to communicate confidentially about issues of public importance. Journalists communicating with sources share this right, and laws which force the disclosure of those whom the journalist is speaking with violate the journalist's freedom to association.

More specifically, warrantless surveillance has been held to violate the First Amendment right of association. In *Zweibon v. Mitchell*, the federal government intercepted telephone communications made by members of the Jewish Defense League in New York without first obtaining judicial approval. 516 F.2d 594 (D.C. Cir. 1975). The government alleged that it was investigating the group's criminal activities. The D.C. Circuit Court held that conducting the surveillance without judicial review violated the First Amendment right of association of members of the Jewish Defense League.

> Prior judicial review is important not only to protect the privacy interests of those whose conversations the Government seeks to overhear, but also to protect free and robust exercise of the First Amendment rights of speech and association by those who might

> otherwise be chilled by the fear of unsupervised and unlimited Executive power to institute electronic surveillances.

*Id.* at 633. In *Zweibon*, the court stated that surveillance violated the group's right of association because of the effect it would have of stopping potential speakers from exercising their First Amendment rights. Likewise, the warrantless surveillance conducted via the FAA chills the speech of journalists and sources because of the fear of future interception.

Journalists covering international issues, particularly related to national security, are subject under the FAA to surveillance by the very nature of the discussions they will have with their sources and by the location of their sources abroad. This is true even though many of the sources are not subjects of governmental investigations. The law sweeps within its reach a large number of conversations that journalists covering international issues and national security will have with sources. The journalists on these beats are often writing about matters of the utmost public interest—stories that touch on the government's involvement in Iraq or Afghanistan, stories involving the U.S. military's treatment of detainees, stories about the reach of executive power during wartime. These types of stories lie at the heart of what is protected by the First Amendment and a journalist has a First Amendment right of association to communicate about these topics without having to disclose the identities of those they are communicating with.

By allowing the governmental interception of these communications, the FAA risks the disclosure, without procedural safeguards, of the sources with whom the journalist is associating, thus violating the journalists' First Amendment right of freedom of association. It also instills fear of surveillance in potential speakers, thus having the effect of prohibiting future speech. As in *NAACP*, the disclosure of the sources with whom the journalist speaks could subject both the journalist and the source to "economic reprisal, loss of employment, threat of physical coercion,

and other manifestations of public hostility" because of the risks involved with speaking about such controversial topics. Additionally, as in *Zweibon*, government surveillance violates the right of association by prohibiting future communications between journalists and sources.

## CONCLUSION

The wide reach of the FAA is contrary to the country's democratic commitment to freedom of the press. The law violates the First Amendment rights of journalists by destroying a journalist's ability to meaningfully promise confidentiality to international sources and to freely associate with those sources. Additionally, the law undermines the news media's constitutionally protected role as a watchdog of government action by allowing the government to use information obtained by the press in its terrorism investigations. The law has severe ramifications on the public's interest and on the press, as it prevents journalists from gathering news and reporting important stories about international issues. For these and the foregoing reasons, *amicus curiae* urges this court to hold the FISA Amendments Act of 2008 unconstitutional.

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2008, I caused to be served, via Electronic Case Filing, the Brief of *Amicus Curiae* The Reporters Committee for Freedom of the Press in Support of Plaintiffs' Motion for Summary Judgment and *Amicus Curiae's* Rule 7.1 Disclosure Statement. I further certify that on December 19, 2008, I served one copy of the foregoing Brief, by electronic mail, to the following party counsel:

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