

No. 02-954

IN THE
Supreme Court of the United States

OFFICE OF INDEPENDENT COUNSEL,
Petitioner,

v.

ALLAN J. FAVISH,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

Motion of *Amici Curiae* Reporters Committee for Freedom of the Press,
American Society of Newspaper Editors, Radio-Television News Directors
Association, Society of Professional Journalists,
Association of Alternative Newsweeklies, National Press Club,
Investigative Reporters and Editors, Inc.,
and National Freedom of Information Coalition
for Leave To Participate in Oral Argument
and for Divided Argument

Amici curiae Reporters Committee for Freedom of the Press, *et al.*, respectfully move for leave for their counsel, Deanne E. Maynard, to participate in oral argument and for divided argument. Respondent Allan J. Favish has authorized amici to represent that he consents to concede five minutes of his time to *amici*.

This case raises the issue of the proper scope of section 7(C) of the Freedom of Information Act (“FOIA”), which creates a narrow exemption from disclosure for “records or information compiled for law enforcement purposes, . . . to the extent that the production . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C)

(“Exemption 7(C)”). The government seeks to use this provision to withhold from disclosure several photographs that were an important part of a government investigation into the death of Vince Foster, a public official who died in an unnatural (and public) manner while in possession of information involving ongoing investigations of high-level government officials. The photographs also were relied upon by the numerous government inquiries and reports that examined the conduct of the initial investigation and the circumstances of the death. The Ninth Circuit held that the photographs at issue here should be released.

Amici include associations that represent reporters, editors, news executives, and communicators in print, broadcasting, and electronic media, as well as a national organization that supports freedom-of-information coalitions in more than 30 states. *Amici* will file a brief in this Court urging that the Ninth Circuit’s judgment be affirmed.

The presentation of oral argument by a private *amicus* is appropriate in this case. *Amici* have a serious stake in the outcome. In furtherance of the public interest advanced by the FOIA in “she[dding] light on an agency’s performance of its statutory duties or otherwise let[ting] citizens know what their government is up to,” *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487, 497 (1994) (internal quotation marks omitted), *amici* frequently obtain information through the FOIA that they then disseminate to the citizenry. The government is urging this Court to graft onto the FOIA an extraordinarily restrictive test for determining the existence of a public interest and is taking an overly expansive view of the privacy interest at stake. This Court’s discussion of the language of Exemption 7(C) and of the proper test for application of that exemption may well have far-reaching implications for the future use of the FOIA by journalists and writers, as well as by the general public.

Moreover, *amici* will bring experience and a perspective to the case that would substantially enhance the value of oral argument. While respondent Favish is intimately familiar with the facts of this case, the briefing has focused on Favish's interest in obtaining the requested photographs. However, as this Court repeatedly has made clear, "the identity of the requesting party has no bearing on the merits of his or her FOIA request," *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 771 (1989), and there are other members of the public with a strong interest in using the withheld photographs to "shed light on" the government's activities.

CONCLUSION

For the foregoing reasons, this Court should grant *amici* leave to participate in oral argument and should grant divided argument.

Respectfully submitted,

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