
ORAL ARGUMENT NOT YET SCHEDULED

Nos. 17-5217 & 17-5232 (Consolidated)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

IN RE: U.S. OFFICE OF PERSONNEL MANAGEMENT
DATA SECURITY BREACH LITIGATION

On Petition for Review of an
Order of the U.S. District Court for the District of Columbia

**NOTICE BY ELECTRONIC PRIVACY INFORMATION CENTER (EPIC)
OF INTENT TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF
PLAINTIFF-APPELLANTS**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. Rules 27(a)(4) and 28(a)(1)(A), *amicus curiae* EPIC submits the following corporate disclosure statement:

EPIC is a public interest research center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other Constitutional values. EPIC is a 501(c)(3) non-profit corporation. EPIC has no parent, subsidiary, or affiliate. EPIC has never issued shares or debt securities to the public.

/s/ Marc Rotenberg
MARC ROTENBERG

NOTICE OF INTENT TO FILE AN *AMICUS CURIAE* BRIEF

Pursuant to D.C. Cir. Rule 29(b), and the guidance set forth in Section IX(A)(4) of this Court's Handbook of Practice and Internal Procedure, EPIC hereby notifies this Court of the intent to file an *amicus curiae* brief in the above captioned matter in support of the Plaintiff-Appellants in the consolidated cases.

Counsel plaintiffs and defendants in both of the consolidated cases have indicated that they consent to the filing of EPIC's *amicus curiae* brief.

EPIC is a public interest research center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other constitutional values. EPIC maintains one of the most popular web sites in the world concerning privacy—epic.org—and is recognized as a preeminent expert on consumer privacy issues.

EPIC routinely files amicus briefs in federal cases concerning important privacy issues including, in particular, standing to challenge unlawful business practices. *See, e.g.*, Brief of *Amici Curiae* EPIC and Thirty-Two Technical Experts and Legal Scholars in Support of Respondent, *Spokeo v. Robins*, 136 S. Ct. 1540 (2016) (No. 13-1339) (arguing that the violation of a consumer's privacy rights under federal law constitutes an injury-in-fact sufficient to confer Article III standing); Letter from Marc Rotenberg to Molly C. Dwyer, Clerk of Court, U.S. Court of Appeals for the Ninth Circuit, *Eichenberger v. ESPN*, 876 F.3d 979 (9th

Cir. 2017) (No. 15-135449) (arguing that a violation of the VPPA disclosure rule is an injury-in-fact sufficient to confer Article III standing); Brief of *Amicus Curiae* EPIC in Support of Appellants, *Attias v. Carefirst, Inc.*, 865 F.3d 620 (D.C. Cir. 2017) (arguing that the negligent handling of personal information prior to a data breach, giving rise to a common law cause of action, is an injury-in-fact sufficient to confer Article III standing) (No. 16-7108); Brief of *Amicus Curiae* EPIC in Support of Plaintiff-Appellant and in Support of Reversal, *Gubala v. Time Warner Cable*, 846 F.3d 909 (7th Cir. 2017) (arguing that when a company violates a federal law, that is a “legal injury” and the reason that the court must hear the case).

EPIC has also filed amicus briefs in cases concerning the protection of individuals’ constitutional right to informational privacy. *See, e.g.*, Brief of *Amici Curiae* EPIC and Legal Scholars and Technical Experts in Support of Respondents, *NASA v. Nelson*, 562 U.S. 134 (2011) (arguing that NASA may not compel rocket scientists to disclose personal health information as a condition of employment); Brief of *Amicus Curiae* EPIC in Support of Appellant and Urging Reversal, *Doe v. Luzerne County*, 660 F.3d 169 (3rd Cir. 2011) (arguing that the case presents novel privacy issues involving new technology and the lower court failed to appreciate the unique damage caused by unlawful disclosures over computer networks).

EPIC also has a particular interest in the data collection practices of federal government agencies, and filed comments last year with the Office of Personnel Management recommending limits on data collection. EPIC, Comments on Notice of Submission for Approval: Information Collection 3206-0258; Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P-S), OMB Control No. 3206-0258 (2016).¹

EPIC intends to file an amicus brief of no more than 7,000 words, addressing points not made by the Plaintiff-Appellants, that will aid the Court's consideration of this case. EPIC's brief is necessary to address the privacy interests at stake in the case under review, and to inform the Court about the right of individuals to keep confidential their personal information. To consolidate arguments for this Court's consideration under Fed. R. App. P. 29(b)(1) and D.C. Circuit Rule 29(d), additional legal scholars and technical experts may also join the proposed brief.

¹ https://epic.org/apa/comments/EPIC-OPM_SF-85.pdf.

Respectfully submitted,

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Dated: March 14, 2018

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this 14th day of March 2018, he caused the foregoing “Notice by Electronic Privacy Information Center of Intent to File Brief as Amicus Curiae in Support of Respondents” to be electronically filed using the Court’s CM/ECF system, which served a copy of the document on all counsel of record on the case.

/s/ Marc Rotenberg
MARC ROTENBERG