No. 14-646

IN THE
# Supreme Court of the United States

SAI,
*Petitioner*,
v.

UNITED STATES POSTAL SERVICE,
*Respondent*.

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

**BRIEF OF *AMICI CURIAE* WESTERN CENTER ON LAW AND POVERTY AND LEGAL AID ASSOCIATION OF CALIFORNIA IN SUPPORT OF PETITIONER**

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## INTERESTS OF THE *AMICI*[1]

The *amici* are legal aid organizations that represent or aid in the representation of millions of low-income Californians in suits involving such critically-important issues as employment and labor rights, housing access and discrimination, public benefits, and the rights of disabled Americans.

More specifically, the Western Center on Law and Poverty is California's oldest and largest legal services support center for the state's neighborhood legal aid offices. The Center represents over eight million poor and low-income Californians on issues relating to healthcare, housing, public benefits, and access to justice. For many years, the Center has monitored access-to-court issues in California and advocated for meaningful enforcement of fee waiver statutes in courts and in the California Legislature.

The Legal Aid Association of California ("LAAC") is a statewide membership association of more than eighty public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general

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[1] Counsel of record for all parties received notice at least 10 days prior to the due date of the *amici*'s intention to file this brief, and all parties included in the caption of this brief have consented to the filing of this *amicus curiae* brief. No counsel for a party authored this brief in whole or in part, no counsel for a party made a monetary contribution to fund the preparation or submission of this brief, and no one other than the *amici* and their counsel made any such monetary contribution.

poverty law to civil rights to immigration. LAAC and its member organizations also serve a wide range of low-income and vulnerable populations, including seniors, persons with disabilities, victims of domestic violence, and migrant farmworkers.

Most of the *amici*'s clients cannot afford to pay court costs and, therefore, must seek leave to proceed *in forma pauperis* (IFP) under 28 U.S.C. § 1915(a). An application to proceed IFP under this statute requires detailed disclosures of the applicant's personal financial information. The *amici* strongly believe that such information should be sealed or protected from public disclosure in all forms, and particularly when filed in an online court docket.

The decision of the United States Court of Appeals for the D.C. Circuit, which is the subject of the petition, creates a harmful presumption that IFP applicants must publicly disclose their private financial information to access a federal court. It also furthers a circuit split over the privacy protections afforded to IFP applications. The Ninth Circuit—the circuit in which *amici*'s clients reside—applies the same harmful presumption of public disclosure. The First and Third Circuits protect IFP applications from disclosure.

This petition presents the Court with an opportunity to resolve the circuit split, clarify that the historic presumption of public access to court documents does not apply to the sensitive financial data in an IFP application, and announce a rule that protects the privacy interests of litigants who depend on the IFP statute to access our civil justice system.

## SUMMARY OF THE ARGUMENT

Applicants for *in forma pauperis* (IFP) status under 28 U.S.C. 1915(a) must disclose their private financial information so that a court may determine their eligibility to proceed IFP. Although this personal financial data is valuable to the court in determining IFP eligibility, the public's interest in unfettered access to this sensitive data is minimal. Yet, the D.C. Circuit refuses to seal this data based on a rigid application of the historic presumption that court records should be open to the public.

The D.C. Circuit's no-privacy rule conflicts with holdings from other circuits, fails to account for the risks associated with public disclosure of private financial information, and overlooks the presumption of privacy that should protect such information. If the D.C. Circuit's rule stands, it will subject IFP applicants to undue risk of identity theft and other harms and chill the exercise of court-access rights guaranteed to low-income parties by the federal IFP statute, particularly in this age of electronic dockets and instant access to court records.

IFP litigants should not be required to forgo their right to keep sensitive financial data private as the price of exercising their constitutional right to access a federal court. Any marginal public interest in such data is far outweighed by the personal privacy interests that warrant its protection. The Court should grant certiorari to resolve the circuit split and clarify the law on these important court-access and personal privacy issues.

## ARGUMENT

### I. The Circuit Split Over IFP Applicants' Privacy Rights Undermines the Federal IFP Statute's Effectiveness.

The promise of equal and meaningful access to our civil justice system cannot be realized if persons seeking to proceed IFP must publicly disclose their private financial information as the price of entering court. Accordingly, federal courts should uniformly apply a presumption that IFP applications are protected from public disclosure if the applicant requests to file under seal. Such a presumption of privacy effectuates the purpose of the federal IFP statute and properly recognizes that the public's right to access court documents does not extend to this narrow category of private financial information.

The D.C. Circuit's contrary rule—that an IFP applicant must post his application in the court's public docket—puts indigent parties to an untenable choice: publicly disclose their private financial information or forgo their legal rights. This no-privacy rule undermines the principle that all persons should have meaningful access to our federal courts, chills the exercise of access rights by low-income parties, and exacts a "price" from paupers that other litigants need not pay.

The Court should grant certiorari to review the D.C. Circuit's no-privacy rule.

### A. To access a federal court, IFP applicants must provide detailed disclosures of their private financial information.

Meaningful access to our federal courts is critical to a fair and effective civil justice system. To that end, Congress has declared that persons should be allowed to pursue non-frivolous claims and defenses in a federal court even if they cannot afford to pay court fees. 28 U.S.C. § 1915(a)(1). This IFP statute "is designed to ensure that indigent litigants have meaningful access to the federal courts." *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). The statute fulfills the ideal—traceable to the Magna Carta—that all persons, poor and rich alike, should have access to courts. *See* Robert S. Catz and Thad M. Guyer, *Federal In Forma Pauperis Litigation: In Search of Judicial Standards*, 31 Rutgers L. Rev. 655, 656-57 (1978); *accord Neitzke*, 319 U.S. at 330. And it confirms that the constitutional right to petition the courts for redress is not a hollow one. *See Cal. Motor Trans. Co. v. Trucking Unlimited*, 404 U.S. 508, 511 (1972) (recognizing constitutional right to petition courts).

Each year, thousands of low-income and indigent persons invoke Section 1915(a)(1) when seeking to vindicate their rights or defend their interests in a federal civil action.[2] These federal actions present

[2] Statistical data on IFP filings is not readily available, but the Administrative Office of the United States Courts reported that over 77,000 pro se civil cases were filed in federal district courts in fiscal year 2013. Judicial Business of the United States Courts 2013, Annual Report of the Director, Administrative Office of the United States Courts, Table C-13,

claims that are critically important to IFP litigants and their families, such as civil rights claims (including employment and housing discrimination claims), contract disputes, real and personal property suits, tort claims, labor disputes, social security appeals, and federal statutory claims. *See* Note, *Providing Equal Access to Justice: A Statistical Study of Non-Prisoner Pro Se Litigation in the United States District Court for the Northern District of California in San Francisco*, 48 Hastings L.J. 821, 830-33 (1996-1997). As the number of pro se suits continues to rise, so too will the number of persons who seek IFP status. *See* Stephan Landsman, *The Growing Challenge of Pro Se Litigation*, 13 Lewis & Clark L. Rev. 439, 440-47 (2009) (discussing the "inexorably rising tide of pro se litigation" in state and federal courts).

The importance of the federal IFP statute in our civil justice system extends beyond those applicants who invoke it to vindicate their own rights. Civil suits pursued by IFP parties have contributed to the development of federal law in significant ways. *E.g.*, *Millbrook v. United States*, 133 S. Ct. 1441 (2013) (clarifying scope of Federal Tort Claims Act's waiver

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http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2013/appendices/C13Sep13.pdf. Even if only a fraction of these pro se parties applies for IFP status, the number of IFP applications easily exceeds 10,000 per year. *See* Note, *Providing Equal Access to Justice: A Statistical Study of Non-Prisoner Pro Se Litigation in the United States District Court for the Northern District of California in San Francisco*, 48 Hastings L.J. 821, 830-31 (1996-1997) (finding that 30% of all pro se litigants applied for IFP status). And that does not account for suits filed by IFP parties who are represented by legal services organizations and pro bono attorneys.

of sovereign immunity); *Erickson v. Pardus*, 551 U.S. 89 (2007) (developing pleading standards under Federal Rules of Civil Procedure); *Thomas v. Tex. Dep't of Family and Protective Servs.*, 427 Fed. Appx. 309 (5th Cir. 2011) (clarifying scope of exigent circumstances exception to Fourth Amendment's warrant requirement); *Walker v. Frank*, 19 F.3d 20 (6th Cir. 1994) (establishing procedural requirements for employment discrimination claims); *Brock v. City of Richmond*, 983 F.2d 1055 (4th Cir. 1993) (clarifying standard for appointing counsel in certain civil cases); *Ketchum v. West Memphis*, 974 F.2d 81 (8th Cir. 1992) (confirming constitutional right to travel freely among states). As the number of IFP suits rises, so too will their importance in developing and clarifying the law for all litigants.

To access a federal court under Section 1915(a), an IFP applicant must complete and file with the district court a detailed financial affidavit. *See* Pet. App. 22a-27a. The court-mandated affidavit requires sworn disclosures of personal financial information, including:

- amounts and sources of income for the applicant and his or her spouse;

- an employment history for the applicant and his or her spouse;

- a list of bank accounts held by the applicant and his or her spouse, along with the financial institution at which each account is held;

- a detailed list of the applicant's and his or her spouse's assets, and the value of each asset;

- a list of debts owed to the applicant and his or her spouse, along with each debtor's identity;

- a list of all dependents;

- a detailed list of the applicant's and his or her spouse's expenses and liabilities; and

- the applicant's age, place of residence, daytime telephone number, years of schooling, and the last four digits of his social security number.

*See* Pet. App. 22a-27a.[3] The presiding judge uses this information to assess the applicant's economic condition and determine his or her eligibility for IFP status.

The IFP affidavit is the key that unlocks the courthouse doors. It is also a unique aggregation of the type of personal financial information that "is universally presumed to be private, not public." *In re Boston Herald*, 321 F.3d 174, 190 (1st Cir. 2003). In today's world of easily-accessible online dockets, the disclosure of that data set in an unsealed court filing renders an IFP applicant immediately vulnerable to identity theft and other misuses of his private information. These disclosure risks and the related chilling effect on IFP applications are discussed in detail in Section II, *infra*.

[3] The IFP affidavit used by federal courts in the D.C. Circuit is based on the form prescribed by the Federal Rules of Appellate Procedure. *See* Fed. R. App. P. Appendix of Forms, Form 4.

### B. Due to the circuit split over protections afforded IFP applications, some parties must publicly disclose their private financial data to access a federal court.

Given this aggregation of personal financial information in court-mandated IFP affidavits, the circuit courts to have addressed the question in the internet age (other than the D.C. Circuit) recognized that unrestricted public access to the financial information in IFP applications could harm indigent parties and chill their exercise of the access rights granted by Section 1915(a). *See Hart v. Tannery*, No. 11-2008, 2011 WL 10967635, *1 (3d Cir. June 28, 2011); *In re Boston Herald*, 321 F.3d at 188-89.

In *Boston Herald*, the First Circuit held that the common law presumption of public access to judicial proceedings and documents did not extend to an application for assistance under the Criminal Justice Act ("CJA"), 18 U.S.C. § 3006A(a), which is analogous to an IFP affidavit under Section 1915(a). 321 F.3d at 189-91; *see Olsen v. United States*, No. 07-34, 2007 WL 1959205 (D. Me. July 3, 2007) (applying *Boston Herald* rationale to seal IFP application in civil proceeding). As the First Circuit recognized, public disclosure of the private financial information in a CJA application may put both the applicant and his family at risk of harm. *Boston Herald*, 321 F.3d at 189-91. So a rule of automatic public disclosure would discourage eligible parties from availing themselves of their right to assistance by forcing them to choose between privacy and assistance. *Id.* at 188. The same risks and chilling effects attend public disclosure of IFP applications. And the same

rule should apply: an applicant's "strong interest in the privacy of his and his family's personal financial information outweighs any common law presumption" of access to this category of private financial information. *Id.* at 190.

In *Hart*, the Third Circuit announced a rule that automatically protects IFP applications and affidavits posted in the court's online docket. 2011 WL 10967635 at *1. Recognizing that "*in forma pauperis* motions and supporting affidavits contain sensitive information," the Third Circuit "locks" all such documents in its electronic docket—meaning that applications "can be seen electronically (on PACER) by parties to the litigation and court staff, but not by the public." *Id.* The public may only access these documents by appearing at the courthouse to request and inspect the private financial information. *Id.* The Third Circuit's rule necessarily—and rightfully—recognizes that any common law right to access court documents does not extend to this narrow category of private financial information *when it is docketed online*.

Splitting from this modern authority, the D.C. Circuit relied on a historic presumption of public access to judicial documents to deny Sai's request to seal his IFP application and affidavit. Pet. App. 2a. Rather than seal his private financial information, the court directed Sai to file his application in the public docket as a condition to the court's considering his request for IFP status. *Id.*[4]

[4] Pursuant to the D.C. Circuit's rules and procedures, Sai's IFP application must be filed in the court's electronic docket. *See* D.C. Cir. Administrative Order Regarding Electronic Case

The Ninth Circuit, like the D.C. Circuit, has applied a historic presumption of public access to require the automatic disclosure of private financial affidavits submitted to the court. In the pre-internet-era case of *Seattle Times Company v. U.S. District Court for the Western District of Washington*, the Ninth Circuit held that financial affidavits submitted in support of a request for court-appointed counsel in a criminal proceeding must be made available for public inspection. 845 F.2d 1513, 1519 (9th Cir. 1986). As the Ninth Circuit saw it, "[t]he financial affidavits merely contained an unremarkable recitation of assets and liabilities," unworthy of protection. *Id.* at 1517.

In sum, IFP applicants in the First Circuit benefit from a presumption that their financial information is private and protected from public disclosure in all forms; applicants in the Third Circuit are at least assured that their information is protected from online disclosure, though it is available for physical inspection at the courthouse; but parties in the Ninth and D.C. Circuits are afforded no protection and must disclose their private financial information as the price for seeking IFP access to a federal court.

As explained below, a compilation of financial information that might have been "unremarkable" in the paper world of 1986 is both highly sensitive and

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Filing, ECF-1. The only privacy protections afforded to this electronic filing are the redaction of personal identifiers, such as the applicant's social-security number, bank account numbers, and date of birth. *Id.* at ECF-9; *see also* Fed. R. App. P. 25(a)(5). As explained in Section II, *infra*, these redactions do not adequately protect an IFP applicant's privacy.

readily susceptible to misuse in today's world of detailed IFP affidavits and easily-accessible online dockets. To preserve the federal IFP statute's effectiveness, this private financial information should be protected from public disclosure.

## II. The D.C. Circuit's No-Privacy Rule Subjects IFP Applicants to Undue Risks and Chills Their Right to Court Access.

Under the D.C. Circuit's no-privacy rule, IFP applicants must publicly disclose their private financial information in an online docket as the price of accessing a federal court. The IFP application's aggregation of sensitive financial data is instantly available to anyone with an internet connection. Such a no-privacy rule chills court access under the federal IFP statute and subjects those with the nerve to proceed to undue risk, both financial and emotional.

In today's world of online dockets, any unsealed court filing is instantly available for public viewing at little or no cost. *See* Chief Justice's 2014 Year-End Report on the Federal Judiciary at 5-6 (discussing federal court CM/ECF and PACER systems). The rise of online filing to near universal use "means that all dockets, opinions, and case file documents can be accessed world-wide in real time, unless they are sealed or otherwise restricted for legal purposes." *25 Years Later, PACER, Electronic Filing Continue to Change Courts*, The Third Branch News (Dec. 9, 2013), http://news.uscourts.gov/25-years-later-pacer-electronic-filing-continue-change-courts. While paper records and laborious search requirements

made "the vast majority of cases . . . practically obscure" 25 years ago, every filing in every federal case is easily and instantly accessible today. *Id.* As the Administrative Office of the United States Courts reported: "Online access makes the public record truly public . . . ." *Id.*

And that is the problem for IFP applicants. While CM/ECF and PACER make the operation of federal courts more efficient and transparent, their potential for misuse has been apparent from inception. Scholars and court observers have long expressed concern about the ways in which wrongdoers can take advantage of PACER for nefarious purposes. Susan Lyons, *Free PACER: Balancing Access & Privacy*, AALL Spectrum, July 2009, at 30, 30-31; Natalie Gomez-Velez, *Internet Access to Court Records – Balancing Public Access & Privacy*, 51 Loy. L. Rev. 365, 413-18 (2005). It is no surprise that electronic court records are fertile ground for identity thieves, stalkers, and other ill-intentioned persons. Gomez-Velez, *supra*, at 373-77; Daniel J. Solove, *Access & Aggregation: Public Records, Privacy & the Constitution*, 86 Minn. L. Rev. 1137, 1138 (2002). "Personal information in public records, once protected by the practical difficulties of gaining access to the records, is increasingly less obscure" thanks to the internet and systems like CM/ECF and PACER. Solove, *supra*, at 1154.

Given the dangers that freely-accessible electronic court records pose, maintaining privacy is not merely an abstract concern for a litigant in federal court; it is a practical problem with real-world consequences. Identity theft is one obvious consequence of publicly

disclosing one's private financial information. In 2012, roughly 16.6 million persons—that is 7% of all United States residents age 16 and older—were victims of identity theft. Erika Harrell & Lynn Langston, *Victims of Identity Theft, 2012*, U.S. Dep't of Justice Bureau of Justice Statistics Bulletin (Dec. 2013), http://www.bjs.gov/content/pub/pdf/vit12.pdf. About 14% of Americans age 16 and older will be victims of identity theft at some point in their lives. *Id*. These crimes cause $24.7 billion in financial losses and massive non-economic harm each year. *Id*. Roughly 36% of identity theft victims reported moderate or severe emotional distress as a result of their identity theft incident. *Id*.

Federal courts that require IFP litigants to publicly disclose their personal financial information are complicit in this phenomenon. The relationship between electronic court records and identity theft has been most thoroughly explored in the bankruptcy context: a joint study conducted by the Department of Justice, Department of Treasury, and the Office of Management and Budget found that when personal financial information is publicly available in bankruptcy cases, it increases identity theft and other crimes. Office of Management & Budget, *Financial Privacy in Bankruptcy: A Case Study on Privacy In Public & Judicial Records*, ii. (Jan. 2001) ("Bankruptcy Study").[5] IFP litigants, who must disclose similar information in non-bankruptcy cases, are no doubt subject to similar risks.

[5] The Bankruptcy Study is *available at* http://www.treasury.gov/press-center/press-releases/Documents/ bankrstudy.pdf (visited Dec. 29, 2014).

Courts that require such disclosures mistakenly assume that redaction of certain information—social-security numbers, for example—will protect the applicant. That is not always the case. The Federal Trade Commission's Bureau of Consumer Protection notes that "highly sensitive personal information" is not limited to social-security numbers. Highly sensitive personal information includes "financial information, credit information, income, and details about routine living expenses." Letter from Joan Z. Bernstein, Director, Bureau of Consumer Protection, Federal Trade Commission, to Leander D. Barnhill, U.S. Dep't of Justice, Exec. Office for U.S. Trustees (Sept. 22, 2000).[6] A person's income and routine living expenses are among the key pieces of information that identity thieves covet. *Id.*; *see also* Bankruptcy Study, *supra*, at ii.

This is exactly the type of personal financial information that must be disclosed in court-mandated IFP affidavits, which are anything but "unremarkable" compilations of data. Even if the various pieces of information were not problematic standing alone, they become so because of the "aggregation problem":

> Viewed in isolation, each piece of our day-to-day information is not all that telling; viewed in combination, it begins to paint a portrait about our personalities. The aggregation problem arises from the fact that the digital

[6] Director Bernstein's letter is *available at* http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-department-justice-executive-office-united-states-trustees-concerning-how-filing/v000013.pdf (visited Dec. 29, 2014).

> revolution has enabled information to be easily amassed and combined. Even information in public records that is superficial or incomplete can be quite useful in obtaining more data about individuals. Information breeds information.

Solove, *supra*, at 1185. While the publication of one's income and routine expenses may not, without more, result immediately in identity theft, it increases the likelihood of such a crime. The aggregated information in an IFP affidavit moves identity thieves several steps closer to their objective.

Identity theft is only one real-world consequence of failing to protect personal privacy. It requires little imagination to foresee other ways in which disclosure of this personal information might be embarrassing, emotionally painful, or misused in ways that, while not criminal, are certainly harmful. For example, an IFP application may reveal sensitive information about family situations, including disabilities suffered by the applicant or his dependents. *See M.W. v. Clarke County Sch. Dist.*, No. 3:06-cv-49, 2007 WL 2765572, *2 (M.D. Ga. Sept. 20, 2007) (finding that no presumption of public access applied to IFP applications in a suit under the Individuals with Disabilities Education Act). And in many of *amici*'s cases, the application will disclose the receipt of public benefits, a highly sensitive piece of information. *See*, *e.g.,* Cal. Welf. & Inst. Code § 10850 (b) (lists of welfare recipients or information in their files "shall only be used for purposes directly connected with the administration of public social services. Except for those purposes, no person shall

publish, disclose, or use . . . any confidential information pertaining to an applicant or recipient.")

As another example, employers or potential employers might misuse a person's financial profile to make decisions about hiring and job assignments on an improper basis. Creditors and collection agencies may mine IFP applications for assets or income sources that could be pursued. If privacy has any meaning at all, a person should have the freedom to choose that his or her employer, potential employer, and creditors receive such information in a consensual transaction, rather than be ambushed by the collection of this information from electronic court records.

Recognizing such dangers, Congress has declared a public policy in favor of protecting "the security and confidentiality" of personal financial information provided by customers to financial institutions. 15 U.S.C. § 6801(a). To further that policy, Congress and the Federal Trade Commission require financial institutions to take affirmative steps to safeguard personal financial information collected from their customers. 15 U.S.C. § 6801(b); 16 C.F.R. §§ 313.3(n)-(o), 314.2-314.4. As a result, federal law protects the Petitioner's personal financial information when he voluntarily provides it to his bank, but affords no protection to such sensitive data in the Ninth and D.C. Circuits—indeed, *requires its public disclosure*—when he puts it in an IFP affidavit mandated by a federal court.

## III. The IFP Applicant's Individual Privacy Interests Outweigh Any Presumption of Public Access to Court Records.

Given the risks that attend the public disclosure of private financial information, the Court should grant the petition to clarify that the public's presumptive interest in court documents does not extend to the financial data in an IFP application. Instead, all such court filings should benefit from a presumption of privacy when a party moves to seal his IFP application.

While judicial records may be presumptively open for public inspection, the public's common-law right to inspect court filings is not absolute. *Nixon v. Warner Commc's, Inc.*, 435 U.S. 589, 597-99 (1978). The public's interest must be balanced against an individual's interest in maintaining the privacy of a filing or category of filings. *Id.* at 602. Public inspection has been restricted when court filings might "become a vehicle for improper purposes." *Id.* at 598 (citing cases in which restrictions were imposed).[7]

Here, an individual's compelling interest in maintaining the privacy of the personal financial

[7] The presumption of a public right to inspect court documents arose when the persons expending their time and resources plying court filings were primarily members of the press, who were presumed to exercise some judgment in deciding what was published to the larger public. *See Nixon*, 435 U.S. at 597 n.8 (tracing common law right to 1894); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491-92, 499 (1975) (recognizing public's dependence on press to disseminate information from court records). As discussed in Section II, times have changed.

information aggregated in an IFP application outweighs any general, common-law right to inspect court filings. Given the significant harm that could result from its disclosure, this type of personal financial information is already "universally presumed to be private, not public." *Boston Herald*, 321 F.3d at 190. Courts routinely protect analogous financial information from public disclosure in litigation involving corporations. *See Apple Inc. v. Samsung Elec. Co.,* 727 F.3d 1214, 1225-26 (Fed. Cir. 2013) (finding that district court abused its discretion by refusing to seal companies' "detailed financial information" in which the public's interest was "relatively minimal"); *Olsen*, 2007 WL 1959205 at *2 (explaining that IFP applicant seeking seal order "is really requesting no more than to have the measure of privacy this court routinely extends in civil litigation when counsel file certain documents in support of written pleadings and those documents contain trade secrets or other information subject to a confidentiality order").

Moreover, the disclosure of this type of private financial information does not further the purpose of the presumption in favor of public access, which is to "promot[e] the public's understanding of the judicial process and significant public events." *Apple Inc.*, 727 F.3d at 1226. If the public's interest in the financial data of two of the world's largest, publicly-traded companies is so minimal that it cannot overcome those companies' privacy interests in that information and the risks attendant with its release, *see id.*, then surely the public's interest in an IFP applicant's private financial data is too minimal to outweigh the individual applicant's privacy rights.

Finally, a presumption of privacy is critical in the unique context of federal IFP proceedings. Without such a presumption, the access rights preserved by our Constitution and made available to low-income and poor persons under the federal IFP statute will be chilled. Most reasonable people would hesitate to complete a transaction—likely abort it altogether—if the result would be public disclosure of their private financial information on the internet. Indeed, the cautious, contemplative person is the one most likely to weigh the risks of public disclosure and find that those risks outweigh the potential benefits of pursuing their meritorious claim or defense, not the party who has "nothing to lose" by litigating.

The federal IFP statute was intended to provide equal and meaningful access to our civil justice system for low-income and poor litigants who cannot afford court costs. In two circuits, however, IFP applicants must pay an entry "price"—the public disclosure of their private financial information—that chills access and subjects them to unnecessary risks. The Court should grant certiorari and clarify that the personal financial information in an IFP application is presumptively private and should be sealed from public view when so requested.

## CONCLUSION

The Court should grant certiorari to afford this case full consideration on the merits.

Respectfully submitted,

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