ORAL ARGUMENT NOT YET SCHEDULED
No. 14-5055

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE KELLOGG BROWN & ROOT, INC., ET AL.,
Petitioner.

On Petition for a Writ of Mandamus to the United States District Court for the District of Columbia, No. 1:05-CV-1276

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS, COALITION FOR GOVERNMENT PROCUREMENT, AMERICAN FOREST & PAPER ASSOCIATION, AND ASSOCIATION OF CORPORATE COUNSEL AS AMICI CURIAE SUPPORTING PETITIONER

RACHEL L. BRAND
STEVEN P. LEHOTSKY
NATIONAL CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062
(202) 463-5337

Counsel for the Chamber of Commerce of the United States

LINDA E. KELLY
QUENTIN RIEGEL
PATRICK FORREST
NATIONAL ASSOCIATION OF MANUFACTURERS
733 10th Street, NW, Suite 700
Washington, DC 20001
(202) 637-3000

Counsel for the National Association of Manufacturers

CARL NICHOLS
ELISEBETH COOK
LEAH LITMAN
ADAM KLEIN
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 663-6000

JAN POLING
AMERICAN FOREST & PAPER ASSOCIATION
1101 K Street, NW, Suite 700
Washington, DC 20005
(202) 463-2590

Counsel for the American Forest & Paper Association

March 19, 2014

ADDITIONAL COUNSEL LISTED ON INSIDE COVER

CAROLYN ALSTON
COALITION FOR GOVERNMENT PROCUREMENT
1990 M Street NW, Suite 450
Washington, DC 20036
(202) 331-0975

Counsel for the Coalition for Government Procurement

AMAR D. SARWAL
WENDY E. ACKERMAN
ASSOCIATION OF CORPORATE COUNSEL
1025 Connecticut Avenue, N.W. Suite 200
Washington, DC 20036
(202) 293-4103

Counsel for the Association of Corporate Counsel

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, amici curiae certify that no amicus curiae has outstanding shares or debt securities in the hands of the public, and none has a parent company. No publicly held company has a 10% or greater ownership interest in any amicus curiae.

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Amici curiae the Chamber of Commerce of the United States of America, the National Association of Manufacturers, the Coalition for Government Procurement, and the American Forest & Paper Association represent many of the largest businesses and government contractors in the United States. Amici's members depend on in-house attorneys, many of whom are members of amicus curiae Association of Corporate Counsel, to oversee internal investigations needed to ensure compliance with various legal obligations. Amici are concerned that the District Court's ruling will erode the attorney-client privilege and negatively affect how their members conduct internal compliance programs. A full statement of amici's interest under Fed. R. App. P. 29(c)(4) is set forth in an addendum.[1]

ARGUMENT

It has long been recognized "that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client." *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). If permitted to stand, the District Court's unprecedented decision threatens to work a sea change in the well-settled rules governing internal corporate investigations, thereby diminishing the attorney-client privilege and harming the

[1] Pursuant to Federal Rule of Appellate Procedure 29(c)(5), amici certify that no party's counsel authored this brief, in whole or in part; that no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and that no person—other than the amici, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

efficacy of companies' internal compliance programs and the federal regulatory regimes that require or encourage them.

I. THE DISTRICT COURT'S "BUT FOR" TEST IS INCORRECT, UNPRECEDENTED, AND UNWARRANTED

"A party invoking the attorney-client privilege must show (1) a communication between client and counsel that (2) was intended to be and was in fact kept confidential, and (3) was made for the purpose of obtaining or providing legal advice." *In re County of Erie*, 473 F.3d 413, 419 (2d Cir. 2007); *see Fisher v. United States*, 425 U.S. 391, 403 (1976). In a significant departure from established precedent, the District Court held that to establish the third prong—that a communication's purpose was to obtain legal advice—a party must establish that the communication was made *only* because legal advice was sought. Op. 5.

The majority of federal courts require that the communication have the *predominant* or *primary* purpose of securing legal advice. *See, e.g.*, *County of Erie*, 473 F.3d at 420; *In re Grand Jury Subpoena*, 204 F.3d 516, 520 n.1 (4th Cir. 2000); *Montgomery County v. MicroVote Corp.*, 175 F.3d 296, 301 (3d Cir. 1999); *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997) (all applying variants of the primary purpose test).[2] This Court, joining the majority of circuits, has also

[2] The Seventh Circuit, in turn, requires only that "legal advice of any kind was sought" and that the communication "was related to that purpose." *Sandra T.E. v. South Berwyn Sch. Dist. 100*, 600 F.3d 612, 618 (7th Cir. 2010) (internal quotation marks and brackets omitted). The Seventh Circuit's test finds support in the

said that the primary purpose of the communication must be to seek legal advice, and has never required or applied the District Court's "but for" test. *See In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir. 1998) (the privilege applies if "the communication was made 'for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding'" (quoting *In re Sealed Case*, 737 F.2d 94, 98-99 (D.C. Cir. 1984))).

Until the decision here, only three federal district courts had held that federal common law requires a party to show "but for" causation to invoke the attorney-client privilege. *See In re CV Therapeutics, Inc. Securities Litig.*, 2006 WL 1699536, at *3-4 (N.D. Cal. June 16, 2006) (applying "because of" work-product standard to attorney-client privilege claims); *First Chi. Int'l v. United Exch. Co.*, 125 F.R.D. 55, 57 (S.D.N.Y. 1989); *United States v. ISS Marine Servs., Inc.*, 905 F. Supp. 2d 121 (D.D.C. 2012).[3] Other district courts, recognizing the unprecedented nature of the "but for" test, have expressly declined to follow it. *See, e.g.*, *Phillips v. C.R. Bard, Inc.*, 290 F.R.D. 615, 629 (D. Nev. 2013) ("[T]he

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Restatement (Third) of the Law Governing Lawyers. *See id.* § 72, cmt. c ("In general, American decisions agree that the privilege applies if one of the significant purposes of a client in communicating with a lawyer is that of obtaining legal assistance.").

[3] In *MapleWood Partners, L.P. v. Indian Harbor Ins. Co.*, 295 F.R.D. 550 (S.D. Fla. 2013), the court applied the "but for" standard under Florida law (where attorney-client privilege is a matter of state statute), rather than under federal common law.

court will continue to adhere to the 'primary purpose' test as other judges in this district have done." (citing cases)); *Koumoulis v. Independent Fin. Marketing Group, Inc.*, 295 F.R.D. 28, 37 (E.D.N.Y. 2013) (applying primary purpose test).

These decisions recognize that communications may still be privileged even if they have multiple purposes, reflecting that in today's world, "attorneys employed by corporations serve in many roles." *Adair v. EQT Prod. Co.*, 285 F.R.D. 376, 380 (W.D. Va. 2012). These roles may include "(1) legal adviser within the corporation to its constituents in an individual professional capacity; (2) officer of the corporation and member of the senior executive team; (3) administrator of the corporation's internal (or 'in-house') legal department; and (4) agent of the corporation in dealings with third parties, including external (or 'outside') counsel retained by the corporation." DeMott, *The Discrete Roles of General Counsel*, 74 Fordham L. Rev. 955, 957-958 (2005). Indeed, few if any communications with in-house counsel—who also provide risk, compliance, and strategic advice—are for the sole purpose of seeking legal advice. Communications seeking legal advice from in-house counsel may, therefore, simultaneously serve overlapping purposes.

While the "primary purpose" test appropriately recognizes that seeking legal advice may be only one motivation for a communication with in-house lawyers, the District Court's "but for" test unrealistically demands that a party prove that

seeking legal advice was the *sole purpose* of such a communication. Because that test may rarely be met in the context of communications with in-house counsel, the District Court's decision would create a disincentive for companies to involve their in-house counsel in internal investigations, thereby significantly undermining the effectiveness of such investigations and compromising in-house counsel's ability to reliably assess risk and offer meaningful advice to the corporation.

II. THE DISTRICT COURT'S BUT-FOR STANDARD WOULD UNDERMINE INTERNAL COMPLIANCE PROGRAMS AND PENALIZE COMPANIES THAT ADOPT THEM

The District Court's "but for" test is particularly inappropriate where, as here, the relevant communications were made in conjunction with an internal compliance program. "Good corporate citizens … ought not be placed in the dilemma of choosing between effective internal compliance and the liability risks attendant to full disclosure" of all materials uncovered in compliance programs. Goldsmith & King, *Policing Corporate Crime: The Dilemma Of Internal Compliance Programs*, 50 Vand. L. Rev. 1, 45 (1997). The District Court's test, if permitted to stand, would force companies to make that very choice. *See Upjohn Co. v. United States*, 449 U.S. 383, 392 (1981) ("[t]he narrow scope given the attorney-client privilege by the court below not only makes it difficult for corporate attorneys to formulate sound advice when their client is faced with a specific legal problem but also

threatens to limit the valuable efforts of corporate counsel to ensure their client's compliance with the law").

In an apparent attempt to justify its departure from long-standing precedent, the District Court identified three attributes of the materials in question that purportedly placed them beyond the scope of the privilege: (1) they were produced pursuant to a "corporate policy"; (2) they were produced as part of a "compliance investigation required by regulatory law"; and (3) in-house counsel did not involve outside counsel in the internal-compliance investigation. Op. 5-6. But each of these features is typical of many internal-compliance investigations, which are often conducted for the purpose of, among other things, deciding what legal obligations, options, and potential liabilities a company may have. The District Court's approach would penalize companies that have effective and appropriate internal-compliance policies by forcing them either to risk waiver of attorney-client privilege or to forego legal advice.

A. Communications Pursuant To A Corporate Compliance Policy May Also Be Made To Seek Legal Advice

The District Court concluded that the communications at issue could not be privileged because they were made pursuant to a "corporate policy." Op. 5. This approach makes little sense where the aim of the corporate policy (here, as in many cases) is to provide in-house attorneys with facts relevant to the corporation's compliance with the law. "The first step in the resolution of any legal problem is,"

of course, "ascertaining the factual background and sifting through the facts with an eye to the legally relevant." *Upjohn*, 449 U.S. at 390-391. Communications made pursuant to a corporate policy and protected by privilege enable the corporation to seek candid legal advice from in-house lawyers.

More harmful, stripping the attorney-client privilege where corporate policy drives employees to report legally significant facts to in-house lawyers would actually *penalize* companies that have effective compliance policies. Corporations would in effect waive any attorney-client privilege they may have once they adopt a corporate policy aimed at uncovering and deterring legal violations.[4]

That cannot—and should not—be the law. Indeed, penalizing companies with compliance policies would run counter to numerous legal regimes and doctrines that encourage corporations to comply with the law. For example, in *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), the Supreme Court held that an employer has an affirmative defense to a hostile-work-environment claim where the employer has "provided a proven, effective mechanism for reporting and

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[4] The District Court's artificial constraint on the privilege harkens back to outdated cases holding that the privilege was limited to cases where there was actual litigation, rather than efforts to monitor and structure a company's compliance with the law. But modern understanding of the privilege is broader because "[p]ersons seek legal advice and assistance in order to meet legal requirements and to plan their conduct; such steps serve the public interest in achieving compliance with law and facilitating the administration of justice, and indeed may avert litigation." *In re Regents of Univ. of Cal.*, 101 F.3d 1386, 1391-1392 (Fed. Cir. 1996).

resolving complaints of sexual harassment, available to the employee without undue risk or expense." *Id*. at 806. Similarly, the Federal Sentencing Guidelines reward internal compliance programs and similar efforts to "promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law." *United States Sentencing Guidelines Manual* § 8B2.1 cmt. n.3. The District Court's holding would transform these socially beneficial compliance policies from an asset into a liability.

The District Court's proposed "corporate policy" exception would also be unworkable in practice. "Corporate policy" could conceivably encompass an undefined array of different practices—written, unwritten, customary, or officially sanctioned—thereby requiring each district court evaluating a privilege claim to engage in a murky inquiry into whether the communication was required by "corporate policy" or was merely the ad hoc provision of legal advice. The result would be uncertainty where clarity is warranted: "An uncertain privilege … is little better than no privilege at all." *Upjohn*, 449 U.S. at 393.

It is therefore not surprising that no other court has held that communications made pursuant to a "corporate policy" cannot be made to secure legal advice. Rather, courts have held that communications or documents created pursuant to a corporate policy are privileged if they seek legal advice. *E.g.*, *Scurto v. Commonwealth Edison Co*., 1999 WL 35311, at *4 (N.D. Ill. Jan. 11, 1999)

("Thus, even if she was acting pursuant to the corporate policy, Ms. Nouhan was acting in a legal capacity, and the attorney-client privilege and the work product doctrine could apply—and, as the Court has found above … , does apply."); *cf. FTC v. GlaxoSmithKline*, 294 F.3d 141, 147 (D.C. Cir. 2002) (that internal distribution of documents followed corporate policy supported company's argument on confidentiality prong of privilege inquiry).

B. Communications And Investigations That Are Required By Regulatory Law May Also Have The Purpose—And Indeed, Likely Have the Primary Purpose—Of Seeking Legal Advice

Even more troubling is the District Court's conclusion that communications cannot be privileged if made pursuant to a compliance investigation "required by regulatory law." Op. 6. That is precisely backwards: Where the law requires a corporation to conduct a compliance investigation, communications with in-house attorneys are necessarily (or, at a minimum, often) for the very purpose of securing legal advice. For example, the relevant regulations here contemplate that regulated entities will have a "'written code of business ethics,' 'internal controls for compliance,' '[a] mechanism, such as a hotline, by which employees may report suspected instances of improper conduct,' '[i]nternal and/or external audits,'" and "'[d]isciplinary action for improper conduct.'" Op. 6 (citing 48 C.F.R. §§ 203.7000-203.7001(a) (2001)). Each of these mechanisms helps the regulated entity assess its compliance with the law and determine whether, as contemplated

by the same regulations, it must "report[] to appropriate Government officials" any "suspected or possible violations of law," as well as take other actions that may be appropriate. 48 C.F.R. § 203.7001(a)(6). Notably, while the Federal Acquisition Regulation requires that a contractor's internal compliance systems provide for "full cooperation" with responsible government agencies, it specifically provides that "[f]ull cooperation … does not require … [a] Contractor [to] waive its attorney-client privilege." FAR § 52.203-13(a), (c).

The regulations here are not unique. Section 301 of the Sarbanes-Oxley Act, Pub. L. No. 107-204, 116 Stat. 745, 801 (2002), and Exchange Act Rule 10A-3 contemplate that regulated entities would establish procedures for the receipt, retention, and handling of complaints regarding accounting, internal accounting controls, or auditing matters. Regulations implementing the Federal Bank Act require "[e]ach banking entity [to] develop and provide for the continued administration of a compliance program reasonably designed to ensure and monitor compliance with the prohibitions and restrictions" under the Act. 12 C.F.R. § 44.20(a). The Bank Secrecy Act and its implementing regulations, in turn, require banks to develop controls and monitoring programs to ensure compliance with the Act. *Id*. § 21.21. Medicare regulations also require providers to maintain compliance programs to prevent and detect violations of federal law.

See 42 C.F.R. §§ 422.503 (Medicare Advantage organizations), 423.504 (Part D providers).[5]

Other regulatory regimes, while not mandating internal compliance procedures, strongly encourage their implementation. For example, § 406 of the Sarbanes-Oxley Act requires a company to report and explain in its annual report whether it has a Code of Ethics, which the SEC regulations define. 17 C.F.R. §§ 228.406, 229.406. And the Department of Justice considers "the existence and effectiveness of the corporation's pre-existing compliance program," as well as a company's "self-reporting," in determining whether to charge companies for violations of the Foreign Corrupt Practices Act. *See* Department of Justice, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* 52-54 (2012).

The District Court's test would frustrate these regulatory programs "by discouraging the communication of relevant information by employees of the client to attorneys seeking to render legal advice to the client corporation." *Upjohn*, 449 U.S. at 392. If reporting questionable facts to in-house counsel necessarily results in a waiver of the attorney-client privilege, corporate employees

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[5] SEC regulations implementing the Sarbanes-Oxley Act require an attorney to report evidence of a material violation of the securities law "to … the [company's] chief legal officer." 17 C.F.R. § 205.3(b)(1). But that regulation cannot, and should not, render all reports of potential violations to the corporation's in-house counsel unprivileged: The SEC's own implementing rule envisions that the attorney "conducting an internal investigation . . . may engage in full and frank exchanges of information." SEC, *Implementation of Standards of Professional Conduct for Attorneys*, 68 Fed. Reg. 6296, 6300 (Feb. 6, 2003).

would face a significant disincentive to make such reports. "Seeds of distrust within a company might be sown if lower-level employees—mindful of possible future waivers of company attorney-client privilege during an investigation—feel that they cannot trust or communicate openly with company counsel." Yockey, *Choosing Governance in the FCPA Reform Debate*, 38 J. Corp. Law 325, 367-368 (Winter 2013); *see also* Spahn, *Corporate Attorney-Client Privilege in the Digital Age: War on Two Fronts*, 16 Stan. J.L. Bus. & Fin. 288, 309 (Spring 2011) ("If the costs or risks for corporate officers to seek their in-house counsel's advice early and often become too great, they will simply stop asking the difficult questions.").

The District Court's approach would also impose a Hobson's choice on corporations and their in-house lawyers: In-house counsel could oversee the compliance program, thereby risking a waiver of the privilege, or the compliance program could be left entirely in the hands of outside counsel, thereby compromising its effectiveness and value to the company.[6] Obtaining outside counsel is not a complete substitute for in-house counsel's close involvement in internal investigations. "Positioned as an officer within a corporation, a general counsel who is an influential member of the corporation's senior management can help to shape its activities and policies in highly desirable directions … . A

[6] Indeed, the District Court's "but for" test could conceivably render unprivileged a corporation's communications with outside counsel if made pursuant to a compliance program required by corporate policy or regulatory law.

general counsel also may be uniquely well positioned to champion a transformation of the organizational culture." DeMott, *supra*, at 955-956.

The District Court's approach would therefore have a number of deleterious consequences for internal compliance regimes deemed beneficial by federal law. "Absent the control over confidentiality that the involvement of counsel implies, firms might avoid aggressive self-analyses of internal corporate misconduct (and forego the reforms that such evaluations might identify as being necessary) due to the threat of disclosure of the resulting evaluations." Gruner, *General Counsel in an Era Of Compliance Programs and Corporate Self-Policing*, 46 Emory L.J. 1113, 1176 (1997). Professor Gruner identifies seven specific "[f]eatures of corporate investigations which may be reduced due to the lack of privilege or immunity protections" and the resulting pullback of in-house counsel: (1) the range of practices examined; (2) the types of investigations undertaken; (3) the degree of critical analysis applied to investigation results; (4) the extent to which legal analyses are transformed into forward-looking plans; (5) the scope of criticisms of past practices communicated to corporate managers; (6) the breadth of distribution given to legal analyses and reform recommendations; and (7) the period of retention of legal evaluations. *Id*. at 1177. In sum, shrinking the scope of attorney-client privilege applicable to investigations conducted by in-house counsel will hamper the effectiveness of the many internal compliance regimes required by federal law.

Perhaps for this reason, other district courts have upheld privilege claims where documents or communications were made for the purpose of complying with government regulations or investigation demands. *See, e.g.*, *Amco Ins. Co. v. Madera Quality Nut LLC*, 2006 WL 931437, at *8 (E.D. Cal. Apr. 11, 2006) (upholding privilege for materials where "one purpose of the report was to comply with obligations under various statutes and regulations, including the Sarbanes-Oxley Act"); *United States ex rel. Robinson v. Northrop Grumman Corp.*, 2002 WL 31478259, at *4-5 (N.D. Ill. Nov. 5, 2002) (upholding privilege claim for documents produced in internal investigation anticipating a government audit).

C. Communications To In-House Counsel Or Their Agents Are No Less Privileged Than Communications Involving Outside Counsel

Upjohn unambiguously held that the attorney-client privilege applies to employee communications to in-house counsel concerning internal investigations. *See* 449 U.S. at 394-395. The District Court here attempted to distinguish *Upjohn* on the dubious ground that there, the investigating attorneys "conferred with outside counsel" before starting the investigation. Op. 6. But *Upjohn* nowhere suggests that the involvement of outside counsel is necessary for communications to be privileged, and lower courts have repeatedly held that the privilege applies equally to communications to in-house counsel. As this Court explained in a case where "[t]he lawyer[]" "was an in-house attorney," "[t]hat status does not dilute the privilege." *In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 1984); *see also In re*

Teleglobe Commc'ns Corp., 493 F.3d 345, 373 n.27 (3d Cir. 2007); *Shelton v. Am. Motors Corp*., 805 F.2d 1323, 1326 n.3 (8th Cir. 1986). Any different rule would be a remarkable and unwarranted deviation from well-settled law.

The District Court further erred by reasoning that the identity "of the interviewer, who was a non-attorney," indicated the communications were unprivileged. Op. 7 (internal quotation marks omitted). The "realit[y] is that attorneys often must rely on the assistance of investigators and other agents," *United States v. Nobles*, 422 U.S. 225, 238 (1975), and "[f]actual investigations conducted by an agent of the attorney, such as 'gathering statements from employees, clearly fall within the attorney-client rubric,'" *Gucci Am., Inc. v. Guess?, Inc*., 271 F.R.D. 58, 71 (S.D.N.Y. 2010). In some cases it is *necessary* for non-attorneys to conduct the predicate factual interviews: Military contractors, for example, cannot be expected to deploy attorneys overseas to conduct interviews in active military zones, and industrial companies cannot depend on lawyers to uncover facts that require technical expertise to understand.

CONCLUSION

For the foregoing reasons, the petition for mandamus should be granted.

Respectfully submitted.

/s/ Elisebeth Cook

CARL NICHOLS
ELISEBETH COOK
Counsel of Record
LEAH LITMAN
ADAM KLEIN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 663-6000

JAN POLING
AMERICAN FOREST & PAPER ASSOCIATION
1101 K Street, NW, Suite 700
Washington, DC 20005
(202) 463-2590

Counsel for the American Forest & Paper Association

RACHEL L. BRAND
STEVEN P. LEHOTSKY
NATIONAL CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062
(202) 463-5337

Counsel for the Chamber of Commerce of the United States

LINDA E. KELLY
QUENTIN RIEGEL
PATRICK FORREST
NATIONAL ASSOCIATION OF MANUFACTURERS
733 10th Street, NW, Suite 700
Washington, DC 20001
(202) 637-3000

Counsel for the National Association of Manufacturers

CAROLYN ALSTON
COALITION FOR GOVERNMENT PROCUREMENT
1990 M Street NW, Suite 450
Washington, DC 20036
(202) 331-0975

Counsel for the Coalition for Government Procurement

AMAR D. SARWAL
WENDY E. ACKERMAN
ASSOCIATION OF CORPORATE COUNSEL
1025 Connecticut Avenue, N.W. Suite 200
Washington, DC 20036
(202) 293-4103

Counsel for the Association of Corporate Counsel

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure, I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 21(d) and 29(d) because it is fifteen pages, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

/s/ Elisebeth Cook
ELISEBETH COOK

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2014 a true and correct copy of the foregoing Brief of Amici Curiae the Chamber of Commerce of the United States of America, the National Association of Manufacturers, the Coalition for Government Procurement, the American Forest & Paper Association, and the Association of Corporate Counsel Supporting Petitioner was filed with the Clerk of the United States Court of Appeals for the D.C. Circuit via the Court's CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Elisebeth Cook
ELISEBETH COOK

ADDENDUM: INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry, from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. The Chamber thus regularly files amicus curiae briefs in cases raising issues of concern to the Nation's business community.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Coalition for Government Procurement is a national trade association of Federal Government contractors. Coalition members include small, medium, and large business concerns, and collectively account for approximately 70% of the sales generated through the GSA Multiple Award Schedules program and about half of the commercial item solutions purchased annually by the U.S. Government.

Contracts held by Coalition members are subject to many of the compliance requirements at issue in this case.

The American Forest & Paper Association (AF&PA) serves to advance a sustainable U.S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. The forest products industry accounts for approximately 4.5 percent of the total U.S. manufacturing GDP and employs nearly 900,000 men and women. The Association regularly files amicus curiae briefs in cases that raise issues of concern to the forest products industry.

The Association of Corporate Counsel is the leading global bar association that promotes the common professional and business interests of in-house counsel. ACC has over 33,000 members who are in-house lawyers employed by over 10,000 organizations in more than 75 countries. ACC has long sought to aid courts, legislatures, regulators, and other law or policy-making bodies in understanding the role and concerns of in-house counsel. To ensure that clients are able to turn to their in-house counsel for confidential legal advice, ACC has championed the attorney-client privilege, working to ensure that a robust privilege applies to a client's confidential communications with in-house lawyers.

The petition for writ of mandamus presents significant questions concerning the ability of amici's member companies to seek and obtain candid legal advice.

By holding that internal communications are protected by the attorney-client privilege only if the sole purpose of those communications is to seek legal advice, the District Court's decision will erode the attorney-client privilege and negatively affect how member companies conduct corporate internal compliance programs, especially those required or strongly encouraged by federal regulatory regimes. In light of the increasing number of statutes that impose standards of business conduct and internal compliance procedures on amici's members and the potential negative effects of the District Court's decision, amici and their members have a substantial interest in the petition.

In an accompanying motion, amici respectfully respect permission to file this brief with the Court.