

No. 17-571

IN THE
Supreme Court of the United States

FOURTH ESTATE PUBLIC BENEFIT CORPORATION,
Petitioner,

v.

WALL-STREET.COM, LLC AND JERROLD D. BURDEN,
Respondents.

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

SUPPLEMENTAL BRIEF FOR PETITIONER

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RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, petitioner Fourth Estate Public Benefit Corporation states that it is a public benefit corporation that has not issued any stock.

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The government agrees that this case turns on a question that has split the circuits: at what point “registration of [a] copyright claim has been made” within the meaning of § 411(a) of the Copyright Act, 17 U.S.C. § 411(a). It also rejects respondents’ position that this Court should leave this conflict unresolved and urges the Court to grant review. On all those scores, the government is right.

But it is wrong on the merits, because it cannot square its position with the Copyright Act’s text. The Court should resolve the question presented only after full briefing, but the key point is that the Copyright Act consistently uses the phrase “makes registration” or a passive-voice counterpart to refer to an action of the copyright owner. The government’s effort to overcome that textual evidence yields no reason to hold that Congress used the same phrase to mean anything else in § 411(a). The Court should therefore grant the petition, order merits briefing, and reverse the judgment.

ARGUMENT

I. THE COURT SHOULD GRANT THE PETITION TO RESOLVE THE CONCEDED CIRCUIT SPLIT ABOUT THE COPYRIGHT ACT’S REGISTRATION REQUIREMENT

The government and the parties agree that the Eleventh Circuit’s decision deepens an entrenched circuit conflict about the question presented. U.S. Br. 9-10; Opp. 2-5. And the government agrees with petitioner that the Court should resolve that split in this case. U.S. Br. 9-12. For those reasons, the Court should grant the petition.

In particular, the government correctly explains that, because this case arrives on a motion to dismiss, any question about whether petitioner in

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