ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 13, 2021

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

Nos. 17-1276, 20-1505, 20-1510, and 20-1521
(consolidated)

NATIONAL POSTAL POLICY COUNCIL, *et al.*,
Petitioners,
v.
POSTAL REGULATORY COMMISSION AND
UNITED STATES OF AMERICA,
Respondents.

ON PETITION FOR REVIEW OF ORDERS OF
THE POSTAL REGULATORY COMMISSION

MOTION OF PETITIONERS ALLIANCE OF NONPROFIT MAILERS, ASSOCIATION FOR POSTAL COMMERNCE, MPA – THE ASSOCIATION OF MAGAZINE MEDIA, AMERICAN CATALOG MAILERS ASSOCIATION, NATIONAL POSTAL POLICY COUNCIL, MAJOR MAILERS ASSOCIATION, AND INTERVENORS NATIONAL NEWSPAPER ASSOCIATION AND NEWS MEDIA ALLIANCE FOR STAY

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The Alliance of Nonprofit Mailers, American Catalog Mailers Association, Association for Postal Commerce, MPA – The Association of Magazine Media, Major Mailers Association, National Postal Policy Council, National Newspaper Association, and News Media Alliance ("Movants") respectfully request a stay of Postal Regulatory Commission ("Commission") rules that will lead to unprecedented and unlawful postal rate hikes effective August 29, 2021. Pursuant to Federal Rule of Appellate Procedure 18(a)(2)(B)(ii), Movants' request is supported by the sworn statements of the American Lung Association, Consumer Reports, Inc., Disabled American Veterans, Meredith Corporation, Multi Media Channels, LLC, Wounded Warrior Project, Inc., and Yankee Publishing, Inc.

INTRODUCTION

Six months ago, Movants requested a stay of the Commission's final rules, (*Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products*, Docket No. RM2017-3, Order No. 5763 (released Nov. 30, 2020) ("Order 5763")) (Exhibit 1), which authorize above-inflation price increases over market-dominant mail in violation of the Postal Accountability and Enhancement Act (the "Act"). *See* Motion of Petitioners ANM *et al.* for Stay and Expeditious Consideration (Jan. 27, 2021) ("Initial Stay Motion"). Movants had previously requested a stay of the rules from the Commission and were denied. *See Order Denying Stay*, Docket No. RM2017-3, Order No. 5818 (released Jan.

19, 2021) (Exhibit 2). In the Initial Stay Motion, Movants argued that they would be "irreparably harmed in the absence of a stay: they will be forced to pay higher rates, compelled to reduce their mailings … and are precluded by statute from recovering the overcharges even if the rules are later found unlawful." Initial Stay Motion at 2.

The Commission responded that the mailers failed to show that Order 5763 would imminently and irreparably harm them, because several procedural steps needed to effectuate the higher rates had not yet been taken. *See generally* Postal Regulatory Commission's Opposition to Stay (Feb. 8, 2021) ("PRC Stay Opp.") at 2, 17-18 (Exhibit 3). The Commission noted that Order 5763 "does not itself increase the price [mailers] must pay for any particular market-dominant products" and that, at that time, the Postal Service had "not yet determined how to exercise any of the rate authority conferred by the order." *Id.* at 17. The Commission characterized impending price increases as "hypothetical" "unless the Postal Service first gives the public ninety days' notice" and the Commission "then conduct[s] a notice-and-comment proceeding to review the proposed increase." *Id.* at 17-18. "Unless and until the Postal Service proposes specific rate increases," reasoned the Commission, "there is no way to know whether and how those increases might harm" Movants. *Id.* at 18. This Court then denied the Initial Stay Motion because it found that the mailers had "not demonstrated the type of imminent and irreparable harm necessary for a stay." Order, Doc. No 1887800 (Mar. 1, 2021) (Exhibit 4).

The basis for the Court's denial of a stay no longer exists. The Postal Service *has* invoked its rate authority, and in fact has determined to use "virtually all" of it. *See United States Postal Service Notice of Market-Dominant Price Change*, Docket No. R2021-2 (released May 28, 2021) ("USPS Notice") (Exhibit 5) at 1. The Commission *has* conducted its notice-and-comment review of the proposed price changes. *See Notice and Order on Price Adjustments and Classification Changes for Market Dominant Products*, Docket No. R2021-2, Order No. 5905 (released June 1, 2021) (Exhibit 6). And the Commission *has* approved them for implementation. *See Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes*, Docket No. R2021-2, Order No. 5937 (released July 19, 2021) ("Order 5937") (Exhibit 7). There is nothing speculative or "hypothetical" about these rate increases: they will be the largest price increases levied on the Postal Service's monopoly customers since the Act's passage. Movants know the specific price increases that will be charged to individual postal products, they know exactly when (August 29, 2021 at 12:01a.m.) the price increases will take effect, and they know "whether and how those increases might harm" them. *But cf.* PRC Stay Opp. at 18. As shown below, Movants have clearly demonstrated the type of imminent and irreparable harm necessary for a stay. And as was the case when Movants filed the Initial Stay Motion, Movants still satisfy the other *Virginia Petroleum Jobbers* factors.

BACKGROUND

Congress enacted the Act in 2006, keenly aware of the Postal Service's statutorily granted monopoly over the delivery of letters and access to the mailbox. Congress therefore categorized postal products as either competitive or market-dominant, the latter being products over which the Postal Service "exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. §3642(b)(1).

In enacting the Act, Congress created a regulatory structure granting the Commission "enhanced review and oversight responsibilities for market-dominant products" in order to safeguard captive customers of the Postal Service's monopoly. *See* S. Rep. No. 108-318, at 6-7, 19 (2004) ("in recognition that some customers have no non-Postal Service alternatives because of the Congressionally-established restrictions on the carriage of letters outside the mail … this legislation requires that any product subject to this monopoly remain within the market-dominant category."). Shielding mailers against potential abuses of the Postal

Service's market power was Congress's expressed policy. The Senate Governmental Affairs Committee Report explains:

> In establishing the postal regulatory structure in the bill, the Committee has attempted to balance the Postal Service's need for additional flexibility with the public and mailing community's need for increased financial transparency and established safeguards *to protect against unreasonable use of the Postal Service's statutorily-granted monopoly.*

Id. at 19 (emphasis added).

Congress determined that a price cap on market-dominant price increases was the appropriate mechanism to accomplish its goals. Placing limits on the percentage changes in postal rates was "of primary importance" to Congress. *Id.* at 10. Thus, §3622(d)(1)(A) of the Act—titled "Requirements"—states that "[t]he system for regulating rates and classes for market-dominant products shall … include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission" equal to the change in the Consumer Price Index.

The Commission infers that §3622(d)(3) of the Act—which instructs the Commission to review the ratemaking system ten years after the Act's passage and authorizes the Commission to modify or adopt new regulations implementing the system—grants it the power to override not only the *regulations* but the Act's requirements themselves, including the inflation-based cap. Consequently, Order

5763 adopted rules allowing the Postal Service to increase rates for market-dominant products at levels well in excess of inflation.

Movants again ask this Court to stay implementation of the Commission's rules, because we represent the very market-dominant customers that Congress sought to protect against the Postal Service's monopoly abuses. After this Court denied our Initial Stay Motion, the Commission determined that the Postal Service would be allowed to increase class-wide prices up to 7.562 percent in year one on many of the products our members purchase. *See Determination of Available Market Dominant Rate Authority*, Docket No. ACR2020, Order No. 5861 (released Apr. 6, 2021) at 6 (Exhibit 8).

On May 28, 2021, the USPS notified the Commission and mailers of its proposed price changes. Including inflation-based authority of 1.244 percent, "as a result of the new system, the Postal Service has available approximately 6.8 percent of pricing authority for compensatory classes and approximately 8.8 percent of pricing authority for non-compensatory classes. *The Governors have determined to use virtually all of this authority at this time.*" USPS Notice at 1 (emphasis added). On July 13, 2021, the Postal Service rejected Congress's plea to reconsider implementing these price increases in August and using all of its rate authority, and reaffirmed to Congress that it does not believe "the new rules went far enough." *See* Ltr. from Peter R. Pastre to the Hon. Glenn Grothman (July 13,

2021) (Exhibit 9). On July 19, 2021, the Commission formally approved price increases of **6.814 percent** for First-Class Mail, **6.814 percent** for Marketing Mail, **8.771 percent** for Periodicals, **8.804 percent** for Package Services, and **6.808 percent** for Special Services. Order 5937 at 2, Table I-1. Movants purchase mail products from the Postal Service in all of these classes.

The rate increases will become effective in only one month without the requested relief. A stay is necessary to effectuate Congress's policies, abide by the Act's requirements, and protect captive mailers from the largest price increases they have ever faced since the Act's passage.

ARGUMENT

I. LEGAL STANDARD

A motion for stay shall be granted if the movants demonstrate: (i) that the movant is likely to prevail on the merits; (ii) that the movant is likely to suffer irreparable injury absent relief; (iii) that other parties will not suffer harm if relief is granted; and (iv) that a stay is in the public interest. *See Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

II. MOVANTS DEMONSTRATE ALL FOUR *JOBBERS* FACTORS

A. Movants Will Be Irreparably Harmed Absent A Stay

Recognizing that "[t]he first two factors of the traditional standard are the most critical," *Nken v. Holder*, 556 U.S. 418, 434 (2009), Movants begin with harm. The Commission's arguments against Movants' previous request for a stay—that rate increases were "hypothetical" until the Postal Service proposed specific adjustments and the Commission approved them—are now moot. *Cf.* PRC Stay Opp. at 17-18. The Commission described Movants' claims of harm as "particularly speculative" because the above-CPI rate authority it granted to the USPS was on a class-wide basis and did not dictate prices charged to specific postal products within each class. *Id.* at 18. "Unless and until the Postal Service proposes specific rate increases, there is no way to know whether and how those increases might harm petitioners." *Id.*

Now we know. We know, for example, that within the First-Class Mail class, some products will face lower-than-class-average increases (*e.g.*, postcards and single-piece domestic letter prices will rise by five percent) whereas other products will face increases twice as large (flat-shaped mail prices will increase by more than 10 percent). *See* Order 5937 at 75. We know concretely how these increases will harm Movants.

Movants' members will expend millions of additional dollars in postage fees should the impermissible increased rates be permitted to go into effect. Consumer Reports will pay an additional $1.78 million in postage in the next year, and more than $9 million cumulatively in extra postage from 2021-2025. Brophy Decl. at ¶ 13 (Exhibit 10). The American Lung Association will spend an additional $400,000 in postage next year, and more than $1.5 million in extra postage from

2021-2015. Finstad Decl. at ¶ 11 (Exhibit 11). Disabled American Veterans ("DAV") estimates that it will pay "nearly half a million dollars in additional costs this year alone, and one and a half million dollars in additional costs in 2022." Burgoon Decl. at ¶ 10 (Exhibit 12). For smaller mailers such as local or regional newspaper and magazine publishers, the increased postage costs will be devastating. *See* Wood Decl. at ¶¶ 17-18 (Exhibit 13) (increased postage costs of $194,298 this year would exceed Multi Media Channels's average net earnings over the past three years "and cause the company to continue to lose money even with planned efficiency changes to our operation."); Trowbridge Decl. at ¶ 5 (Exhibit 14) ($93,727 in additional postage costs this year will wipe away half of Yankee Magazine's margins).

The Commission has not contested that this financial harm is irreparable, nor could it. Movants are unable to recover the additional postage paid during the pendency of the appeal, even if the Court were to eventually find the rate increases unlawful. 39 U.S.C. §3681. When a movant will be unable to sue to recover any monetary damages against a government agency in the future, such "financial loss can constitute irreparable injury." *Texas Children's Hosp. v. Burwell*, 76 F. Supp. 3d 224, 242 (D.D.C. 2014) (additional citation omitted).

Moreover, the harm to Movants extends beyond the increased postage payments. The increase in postage costs will force Movants into two undesirable outcomes: either Movants must divert funds from mission-critical activities in order to maintain their current mailing or Movants must reduce their mailing and correspondingly reduce their ability to reach the public. Either way, the ability of Movants to educate, advocate, and provide direct services will be significantly curtailed. *See, e.g.*, Hamre Decl. at ¶ 11 (Exhibit 15) (describing the specific loss of services for veterans that will occur should WWP be forced to pay an additional $1.7 million in postage fees); Burgoon Decl. at ¶ 11 (reduced mailings will curtail veterans' benefits, such as rides to medical appointments, career fairs, and free benefits counseling services on which veterans depend); Wood Decl. at ¶ 19 (MMC will be "reducing news coverage and providing less service to our customers"). These harms, too, will be irreparable. *See id.* ("In MMC's experiences, lost customer relationships driven by cuts in our news coverage are irreversible."); Brophy Decl. at ¶ 17 (once publications leave the mail, they will not return).

These harms are also unavoidable: Movants' members rely on the Postal Service and cannot simply mitigate the negative impacts of the postage increases. This is true for smaller, regional mailers like MMC and Yankee. *See* Wood Decl. at ¶ 9 ("There is no other economically viable alternative for MMC to deliver its newspapers."); Trowbridge Decl. at ¶ 7 (*Yankee* magazine's "alternative sources of subscriptions are not good enough to reduce or eliminate our use of direct mail," and efforts to convert subscription, renewal, and invoice communications to email have not been well received by consumers). It is also true for large media companies, like Meredith, which historically had been able to mitigate postage increases. But "[i]n today's leaner business environment, particularly with the COVID-19 pandemic and contraction in the paper and printing industries, cost reduction opportunities are more limited." Harty Decl. at ¶ 15 (Exhibit 16). Veterans' and consumer advocate charities, too, have no choice but to endure the harm caused by these unprecedented price increases. Hamre Decl. at ¶ 12 (for Wounded Warrior, "Alternative solicitation methods cannot replace the value of direct mail to WWP's donor audience. Online and e-mail outreach is limited to those who have an e-mail address. WWP's donor base skews demographically toward the elderly, many of whom do not use e-mail. Those in our donor base who do not have an e-mail address are typically unwilling to donate online with a credit card."); Burgoon Decl. at ¶¶ 7-8 (for DAV, "hard copy mail is the primary, and donor preferred, channel we use to communicate with our active and prospective supporters … members … and volunteers." 90 percent of DAV's donations are received from donors and members acquired through direct mail); *see also* Brophy Decl. at ¶ 9 (explaining that nearly half of Consumer Report's membership revenue derives from print solicitations and 80 percent of all fundraising donations originate from the mail). This loss of income will further exacerbate the harm caused by the rate increase, and likely cause a decrease in mail volume. *See* Finstad Decl. at ¶ 14 ("Postage increases reduce ALA mail volume" and, consequently, revenues); Harty Decl. at ¶ 16 ("We estimate the proposed price increases will result in an approximately 30 percent reduction in our mailpiece volume.").

In short, the rate increases will cause irreparable harm that far exceeds the immediate financial injury of increased postage rates. The very nature and existence of Movants' businesses and nonprofit missions are at stake.

B. Movants Are Likely to Succeed on the Merits of Their Appeal

The merits of this case have now been fully briefed, and there is a substantial likelihood that Mailer Petitioners will prevail on appeal. At a minimum, this case presents serious legal questions of statutory interpretation and the reasonableness of agency rulemaking. *Nat'l Treasury Emps. Union v. Horner*, 1987 U.S. Dist. LEXIS 14946, *1 (D.D.C. 1987) ("Even where the court does not agree that the movant has a substantial likelihood of success on appeal, a stay is appropriate when a serious legal question is presented, when little harm will befall the party resisting the stay, and where denial of the motion will inflict great injury on the movant.").

Movants explained why we are likely to win on the merits when we first sought a stay from this Court. *See* Initial Stay Motion at 5-13. Those arguments are equally valid now; indeed, the arguments on brief reinforce this conclusion. The Commission's rules violate the Act's clear mandate that an inflation-based cap is a "requirement[]" that the "system for regulating rates and classes for market-dominant products *shall* include…." 39 U.S.C. §3622(d)(1)(A) (emphasis added). The parties' briefs reaffirm that the Commission has acted beyond its statutory authority, and that it cannot prevail on the merits. To do so would require this Court to rewrite the Act and ignore the words Congress actually wrote.

The Commission's key merits argument is that 39 U.S.C. §3622(d)(3) "unambiguously" and "expressly" authorizes it to modify or replace all aspects of the initial ratemaking system, including the CPI cap. Initial Brief for Respondent in Case Nos. 17-1276, 20-1505, 20-1510, and 20-1521 (June 14, 2021) ("Commission Br.") at 27-29, 34 (Exhibit 17); *see also* PRC Stay Opp. at 9 ("expressly") and 10 ("unambiguously"). The Commission's argument grossly misrepresents what the statute says. Section 3622(d)(1) of the Act sets forth the "requirement" that the regulatory system of ratemaking created and overseen by the Commission "shall" include an inflation-based price cap. Section 3622(d)(3) permits the Commission to modify its regulations or even adopt alternative regulations, but it does not say that the Commission can override the statutory requirements governing its regulations—expressly, unambiguously, or otherwise. In fact, §(d)(3) does not mention the inflation-based cap *at all*, which means that, by definition, it does not unambiguously or expressly authorize the Commission to weaken or replace the price cap in the ten-year review. The Commission cannot succeed on the merits because its statutory interpretation "rewrites rather than reads the plain statutory text." *Am. Lung Ass'n v. E.P.A.*, 985 F.3d 914, 950 (D.C. Cir. 2021). "The problem with this approach is the one that inheres in most incorrect interpretations of statutes: It asks [the Court] to add words to the law to produce what is thought to be a desirable result. That is Congress's province." *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2033 (2015).

The Commission also argues that its rules are not arbitrary and capricious because its alterations to the ratemaking system "appropriately balanced the competing interests of the Postal Service and its customers." Commission Br. at 3. The Commission's duty, however, is not to simply "split the difference" between the USPS's and the mailers' positions: it is to create regulations designed to achieve the nine statutory objectives that Congress identified, duly incorporating the statutory requirements. A compromise rule is still arbitrary and capricious if it fails to account for important objectives, makes the problem to be solved even worse, or ignores important facts. The Commission committed all of these errors.

The Commission's density adjustment is arbitrary and capricious because the Commission failed to assess the adjustment's effects on the very problem—volume decline—that the Commission was ostensibly solving, and it ignored record evidence showing that the adjustment would actually exacerbate the problem.

The Commission also ignored revenues in the density-adjustment formula, which is irrational when the goal of the entire enterprise is to account for insufficient *revenues* to cover total costs. Providing rate authority regardless of whether USPS revenues are increasing severs the rational connection between the problem and the solution.

In addition, the Commission's rules are arbitrary and capricious because they do not reasonably account for, let alone balance, the statutory objectives of maximizing incentives to reduce costs and maintaining stable and predictable rates. Allowing prices rise by amounts that triple and quadruple past increases, based on annual modifications that are unknown until the USPS files its calculations and the Commission approves them, and that go into effect mere months later, will leave the USPS with little incentive to cut costs and will render rates anything but predictable and stable. So, the Commission falls back on USPS's "inherent incentive" "to exercise business judgment about what rates the market can bear." Commission Br. 53. But preventing USPS from pricing monopolistic products at what the market will bear is why Congress limited rates in the first place.

C. The Remaining Factors Support a Stay

The remaining two factors—harm to another party and the public interest—"merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. Taken together, they clearly support imposition of a stay here.

The Postal Service will not be harmed by the imposition of a temporary stay while the appeal is pending. The Commission's claim that "enjoining the order would undermine the Postal Service's ability to supply critical mail services" lacks credibility. *See* PRC Stay Opp. at 18. This year the Postal Service has been sitting on historically high levels of cash. As of June 30, 2021, it has more than *$23 billion* sitting in the U.S. Treasury available to it—$7 billion more than it had when Movants sought a stay six months ago. *See* Bureau of Fiscal Service, Treasury, *Monthly Statement of the Public Debt of the United States* 12 (June 30, 2021), https://www.treasurydirect.gov/govt/reports/pd/mspd/2021/opdm062021.pdf. The Postal Service may use that money for any purpose. 39 U.S.C. §2003(a). The USPS imposed an inflation-capped price increase on mailers in January of this year, it can continue to file rate adjustments subject to the CPI cap while the appeal is pending, and it may utilize unused rate authority in future years. The legality of the Commission's actions is now fully briefed and before this Court, with oral argument scheduled for mid-September. There is simply no possibility that the

Postal Service will cease operating, or that the public will stop receiving its mail, if a temporary stay were issued.

Conversely, absent a stay, the public at large will suffer harm. The reduction in newspaper publishing in response to large postage increases means that certain small and rural communities will become a "news desert." Wood Decl. at ¶ 11. Other mailers will attempt to offset the postage increases by cutting jobs. Trowbridge Decl. at ¶ 10. Consumers will be impacted as well, as mailers will be forced to pass the increased costs onto consumers in the form of higher prices for print media. Harty Decl. at ¶ 17. This will likely result in certain demographics of customers, such as the elderly and those living in rural areas with limited access to the Internet, having reduced access to information. *Id.* ("This proposed price increase would impede the ability of mail with unique educational, cultural, scientific, and informational value to reach its readers. We expect that certain demographics of consumers, such as those in rural communities or the elderly, would be particularly impacted as they are less easily able to switch to digital content if Meredith were to reduce its print circulation."). And the recipients of charitable programs, including veterans, will receive fewer benefits. Hamre Decl. at ¶ 12 (postage increases will "limit[] the critical programs and services we offer to wounded warriors, Service members, their families, and their caregivers.").

CONCLUSION

Movants are likely to prevail on their merits in this appeal because the Commission has contravened the plain language of the statute by allowing USPS to increase prices faster than the rate of inflation. That unlawful act will cause Movants' members significant and irreparable harm beginning August 29, when they will be forced to pay these illegal prices, curtail program activities, and lose customers and donors, without the prospect of refunds if the prices are ultimately declared illegal. Because it is flush with cash and can always reinstitute its price increases if the Commission prevails, the Postal Service will suffer no harm from the stay. Accordingly, Movants ask this Court to stay Order 5763 until the resolution of this appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with Circuit Rule 32(e)(2) because it contains 4026 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word and 14-point Times New Roman.

/s/ Matthew D. Field
Matthew D. Field

Dated: July 23, 2021

CERTIFICATION OF COMPLIANCE WITH FED. R. APP. P. 18(C)

I hereby certify that prior to the filing of this Motion, I gave notice to all parties through electronic mail.

/s/ Eric S. Berman
Eric S. Berman

CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that I have this 23rd day of July 2021, served a copy of the foregoing document electronically through the Court's CM/ECF system on all registered counsel.

/s/ Elizabeth C. Rinehart
Elizabeth C. Rinehart

Exhibit 1	*Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products*, Docket No. RM2017-3, Order No. 5763 (released Nov. 30, 2020) (“Order 5763”)
Exhibit 2	*Order Denying Stay*, Docket No. RM2017-3, Order No. 5818 (released Jan. 19, 2021)
Exhibit 3	Postal Regulatory Commission’s Opposition to Stay (Feb. 8, 2021) (“PRC Stay Opp.”)
Exhibit 4	Order, Doc. No 1887800 (Mar. 1, 2021)
Exhibit 5	*United States Postal Service Notice of Market-Dominant Price Change*, Docket No. R2021-2 (released May 28, 2021) (“USPS Notice”)
Exhibit 6	*Notice and Order on Price Adjustments and Classification Changes for Market Dominant Products*, Docket No. R2021-2, Order No. 5905 (released June 1, 2021)
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Exhibit 8	*Determination of Available Market Dominant Rate Authority*, Docket No. ACR2020, Order No. 5861 (released Apr. 6, 2021)
Exhibit 9	Ltr. from Peter R. Pastre to the Hon. Glenn Grothman (July 13, 2021)
Exhibit 10	Brophy Decl., Consumer Reports, Inc.
Exhibit 11	Finstad Decl., American Lung Association
Exhibit 12	Burgoon Decl., Disabled American Veterans
Exhibit 13	Wood Decl., Multi Media Channels LLC
Exhibit 14	Trowbridge Decl., Yankee Publishing, Inc.
Exhibit 15	Hamre Decl., Wounded Warrior Project, Inc.
Exhibit 16	Harty Decl., Meredith Corporation
Exhibit 17	Initial Brief for Respondent in Case Nos. 17-1276, 20-1505, 20-1510, and 20-1521 (June 14, 2021) (“Commission Br.”)

EXHIBIT 10

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

National Postal Policy Council, *et al.*, Petitioners v. Postal Regulatory Commission, Respondent.	Nos. 17-1276, 20-1505, 20-1510, 20-1521 (consolidated)

Declaration of Meta A. Brophy

I, Meta A. Brophy, declare as follows:

1. I joined Consumer Reports, Inc. (CR) more than 35 years ago, and have served as Director, Procurement Operations since the early 2000s. CR is a nonprofit organization exempt from federal income tax under Internal Revenue Code Section 501(c)(3), and is headquartered at 101 Truman Ave., Yonkers, NY.

2. I am Past President and an active member of the Alliance of Nonprofit Mailers Board of Directors. I have continuously advocated for maintaining affordable, sustainable postage costs and service standards.

3. In my position, I oversee the team that produces CR's flagship periodical, *Consumer Reports* magazine, the *Consumer Reports on Health* newsletter, direct mail acquisition, retention, and fundraising print programs. I monitor postage costs and impact on the organization as it works to increase acquisition and donor responses and revenue. This income funds our testing, reporting, and advocacy programs that inform consumers on marketplace products and services.

Consumer Reports Promotes the Public Interest Through Its Testing, Research, and Advocacy

4. Founded in 1936, CR has a mission to create a fair and just marketplace for all. Widely known for our rigorous research and testing of products and services, we also survey millions of consumers each year, report extensively on marketplace issues, and advocate for consumer rights and protections around safety, digital rights, financial fairness, and sustainability. CR is independent and nonprofit, and uses all funds it collects to support its tax-exempt mission.

5. CR tests thousands of products and services in 63 labs at its National Headquarters and Testing Center in Yonkers, New York, and at its 327-acre Auto Test Center in Colchester, Connecticut, and reaches tens of millions of people across print, digital and broadcast media. CR spends more than $30M annually to test, rate, and review products and services,

buying products and services at retail, just as consumers do, to ensure that they are identical to the ones consumers take home.

6. The CR team of advocates works for pro-consumer laws and regulations in Washington, D.C., the states, and directly in the marketplace. A recent example of our consumer advocacy can be seen in the 2021 enactment by the Consumer Product Safety Commission of new rules requiring a federal safety standard for infant sleep products. In addition, CR's Survey Research team fields more than 50 surveys each year, reaching hundreds of thousands of consumers. CR proactively engages with industry and manufacturers to share consumer-driven data and insights with the goal of improving products and services before they get to market. CR does not accept advertising, sponsorships, gifts, or free samples for testing and only advertises its own products and services.

The U.S. Postal Service is Crucial to Consumer Reports' Mission

7. CR mailed more than 141,000,000 pieces of mail in 2020, including 8.5 million pieces of First-Class mail. Our postal spend was more than $27 million, about 11 percent of our overall expenses.

8. CR mails primarily First-Class letters and cards, Nonprofit Periodicals, and Nonprofit Marketing Mail letters and flats. Each response to a Marketing Mail flat piece generates a First-Class Business Reply Card or Envelope, 12-13 Periodical mailings and several Marketing Mail letter gift and renewal mailings, as well as First Class letter invoices.

9. CR relies heavily on hard-copy mail. Nearly half of our membership revenue derives from print. Our members express a preference for hard copy. Hard copy reaches more prospective members and donors than alternative media. 80 percent of our fundraising donations come to us in the mail. 77 percent of our paid members receive a print publication as part of their membership. And many of our members and donors are senior citizens who prefer hard copy to digital.

10. Because of our members' and donors' preference for physical mail, and because we must attract new and service existing members in the most cost-effective way possible, CR is extremely sensitive to U.S. Postal Service rate increases. Postage is our only major cost that is non-negotiable and continuously increasing, and we have seen our postage costs increase steadily.

11. This stands in stark contrast to our non-postage costs: over the past decade, non-postage distribution costs have fluctuated with fuel prices. Other goods and services that we purchase through competitive bidding, such as premium gifts, mail package inserting, list and data costs have remained near flat. The printing and paper manufacturing industries have experienced sweeping consolidation and capacity reduction. Decreases in printing prices offset paper increases.

12. On the other hand, for the classes and categories of mail that CR uses, postage price increases often have exceeded the overall rate of inflation as measured by the Consumer Price Index. We routinely negotiate vendor contracts with a CPI escalation shared between the supplier and CR, as we cannot pass along this annual increase to our customers. No other vendor competes with the Postal Service to win our business.

The August 2021 Rate Increases Will Cause Immediate and Irreparable Harm

13. At our current volume levels, following implementation of the new rates, we will pay an additional $1.78 million in postage in the next year. We estimate cumulative rate hikes from 2021 – 2025 will raise our postage spend by 31 to 38 percent (three to four times the rate of inflation)—a cumulative total exceeding $9 million more than our inflation-based estimated postal spend. Moreover, because the Postal Service will be able to charge us even higher rates as volumes decline, we will potentially pay much more than these estimates.

14. Since the PRC will permit the Postal Service to raise prices on market-dominant mail in this way, we estimate needing to cut our acquisition Marketing Mail volume by about 9.5 million pieces in the same time period—a cumulative loss of 18.35 percent in our prospecting volume alone, which creates a downstream effect. When acquisition volume declines, so do retention and periodical volumes.

15. When nonprofit and all other mailers facing the same scenario start cutting mail volumes, the universe of available prospect names contracts, exacerbating the situation exponentially. Revenue declines mean that CR cannot do as much for consumers, as our testing and advocacy programs are dependent on this income generated by our mailings.

16. The actual August 2021 rate changes that were just approved by the Postal Regulatory Commission will have greater impacts than we had budgeted for. In setting our fiscal budget, which runs from June 2021 through May 2022, we budgeted a 6 percent postage increase for First Class and Nonprofit Marketing Mail letters, and an 8.5 percent increase for Nonprofit Marketing Mail flats and Periodicals. Now that the actual rates are published, we expect 7 to 10.5 percent increases on Periodicals (*Consumer Reports* magazine and *Consumer Reports on Health* newsletter) and 12 to 15 percent increases on supplemental mail. CR customers are avid readers and like more rather than less information. A Marketing Mail flat, which is our best solicitation vehicle or control mail piece, is therefore a large-format, multi-page mailer, which will realize a 12.5 percent increase.

17. Postage increases reduce CR mail volume. When we do not grow our acquisition base through direct mail, we also do not renew a commensurate number of members and donors through the mail, and we do not send as many publications (including print premiums) through the mail. ***Once this mail leaves the system, it will not return***.

18. It will be extremely difficult, if not impossible, for CR to mitigate these major additional postage expenses. We are considering and testing the implementation of drastic cost-cutting efforts, including reducing the frequency of our flagship *Consumer Reports* magazine and other titles, collapsing mail efforts and reducing the frequency of mail campaigns, trimming the size and page count of our flat-shaped mailpiece, and attempting to push customers to increased use of digital channels. All of these drastic changes are likely to reduce our membership, donations, and revenue as a whole.

19. In summary, the Postal Service price increase will force us to reduce mail volume. In turn, we will lose members and donors, we will deliver less value to our members and donors,

and we will have less revenue for testing, advocacy, and communicating our core mission to the public.

I declare under penalty of perjury that the foregoing is true and correct.

Date

July 21, 2021

Signature

Meta A Brophy

Meta A. Brophy

EXHIBIT 11

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

National Postal Policy Council, *et al.*, Petitioners v. Postal Regulatory Commission, Respondent.	Nos. 17-1276, 20-1505, 20-1510, 20-1521 (consolidated)

Declaration of Craig D. Finstad

I, Craig D. Finstad, declare as follows:

1. I joined the American Lung Association ("ALA") nearly 39 years ago, and currently serve as Assistant Vice President of Direct Response Operations. American Lung Association is a nonprofit organization exempt from federal income tax under Internal Revenue Code Section 501(c)(3), and is headquartered at 55 W. Wacker Drive, Suite 1150, Chicago, IL 60601. I also serve as Treasurer and an active member of the Alliance of Nonprofit Mailers Board of Directors.

2. In my position, I oversee ALA's direct response program including direct mail acquisition, renewal, planned giving, mid-level donor cultivation and acknowledgments as well as our telemarketing campaigns. I monitor postage costs and their impact on the organization as we strive to maximize the net income available to fund critical lung disease research, advocacy, and education programs.

Mail-Funded ALA Activities Benefit the American Public

3. Founded in 1904, the American Lung Association was created to conquer the tuberculosis epidemic, which we were successful in accomplishing. ALA was perhaps the first nonprofit organization in the country to use direct mail to raise funds, launching its iconic Christmas Seal® program in 1907. Our mission has expanded to focus on all factors that affect lung health including clean indoor and outdoor air, smoking cessation, and a wide array of lung disease research and education programs from lung cancer, COPD, asthma, and many more including, most recently, the COVID-19 pandemic.

4. ALA is America's champion for lung health. Our nation faces many risks to lung health today, and lung cancer claims 150,000 lives each year. ALA is fighting these challenges head-on. We eradicated tuberculosis in the U.S. in the early 20th century. We have protected the Clean Air Act for 50 years. We have helped millions of Americans with lung disease live longer, fuller lives. Now, we are working tirelessly to overcome the challenges to lung health of today. Our mission is to save lives by improving lung health and preventing lung disease.

5. In support of our charitable mission, ALA engages in numerous initiatives including: (i) lung health promotion that educates and improves outcomes for Americans; (ii) health equity initiatives that address social determinants of lung health and help groups that are disproportionally burdened by lung disease; (iii) research studies that advance our understanding of lung disease and discover life-saving preventions, treatments and—one day—cures; and (iv) advocacy efforts that amplify the voices of people impacted by lung disease to our nation's lawmakers, to champion clear air, improve lung health and safeguard access to healthcare. As an example, on April 9, 2020 ALA launched a three-year initiative to end COVID-19 and defend against future respiratory viruses. The initiative highlighted our response to a dire health crisis, as well as our century-long and ever-deepening commitment to lung health.

6. ALA is a trustworthy charity. Eighty-nine cents of every dollar donated to the organization fuels education, research and advocacy efforts. We have been awarded the highest rating from Charity Navigator, the nation's largest independent non-profit evaluator.

The Value of Mail to the American Lung Association

7. ALA mailed more than 17,000,000 pieces of mail in fiscal year 2020-21. Our postal spend was more than $4 million, which is over 35 percent of our overall direct response budget.

8. ALA mails primarily Nonprofit Marketing Mail letters and a large volume of flats (about 45 percent of total mail volume). Each response to a Marketing Mail and flat piece generates a First-Class or Business Reply Envelope (nearly 900,000 letters).

9. ALA relies heavily on direct mail and cannot feasibly convert its communications and fundraising appeals to digital channels. Our average donor is 73 years old, looks forward to receiving mail, and does not donate online. The vast majority of our mailings includes some type of premium that cannot be sent electronically. Hard copy mail reaches more prospective members and donors than does alternative media. And 70 percent of our fundraising donations come to us in the mail.

10. Because of our donors' preference for direct mail, and because we must attract new and service existing donors in the most cost-effective way possible, ALA is extremely sensitive to U.S. Postal Service rate increases. Postage is our only major cost that is non-negotiable and continuously increasing. Because our direct mail program relies heavily on the use of flats, the price increases often have exceeded the overall rate of inflation as measured by the Consumer Price Index. No other vendor competes with the Postal Service to win our business.

The Approved Rate Hikes Will Immediately and Irreparably Harm Our Organization

11. At ALA's current volume levels, in this next year following implementation of the new postal rates, we will pay an additional $400,000 in postage. We estimate cumulative rate hikes from 2021 – 2025 will raise our postage spend by 31 to 38 percent. This translates to a cumulative total exceeding $1.5 million more in postage spending than our inflation-based estimates. Moreover, because the Postal Service will be able to charge us even higher rates as volumes decline, we will potentially pay much more in future years.

12. The impact on ALA is simple: these rate hikes will cause our organization to reduce the mail volume that acquires new donors and sustains existing giving. Reduced mail volume will lead to revenue declines. Revenue declines mean that ALA cannot do as much for constituents, as our education, research and advocacy programs are dependent on this mail-generated income.

13. While ALA is prepared to make major changes to our operations in response to these headwinds, it will be extremely difficult to effectively mitigate the additional postage expenses. We are considering options such as reducing the frequency of our mail campaigns, diminishing our mailing efforts, reducing the size and weight of our most proven and effective mail pieces, attempting to convert our donors to increased electronic communications (against their preferences), and eliminating the print premiums that our donors enjoy receiving. All of these drastic changes run a strong risk of reducing our donor base, donations, and revenue as a whole.

14. Postage increases reduce ALA mail volume. When prices go up, we have nowhere to pass along these increases and our expense budget cannot absorb the extra cost. That means we cannot afford to grow our acquisition base through direct mail, and consequently our renewal donor base will shrink as well. Once this mail leaves the system, it will not return.

15. A stay of the rate increases will not only help ALA avoid serious harm, but will benefit our entire network as well: this includes the new donors and repeat donors that sustain our charitable mission and the vast network of suppliers that make up the mailing industry infrastructure. Without a stay, we will lose donors, deliver less value to our constituents, and will earn less revenue for our health equity initiatives, research, education, and advocacy.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 22, 2021.

Craig D. Finstad
American Lung Association

EXHIBIT 12

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

National Postal Policy Council, *et al.*,
Petitioners

v.

Postal Regulatory Commission,
Respondent.

Nos. 17-1276, 20-1505, 20-1510, 20-1521 (consolidated)

Declaration of Tracey Burgoon

I, Tracey Burgoon, declare as follows:

1. I have had the pleasure of serving as the Director of Direct Marketing for Disabled American Veterans ("DAV") for the last 9 years and have served overall with the organization for almost 24 years. I oversee all direct response fundraising efforts, including direct mail, digital, direct response television, face-to-face marketing, and telemarketing.

2. DAV is a congressionally chartered nonprofit charity that provides a lifetime of support for veterans of all generations and their families, helping more than 1 million veterans in positive, life-changing ways each year. The organization's address is 860 Dolwick Drive, Erlanger, KY 41018.

DAV's Work on Behalf of Our Nation's Veterans

3. Annually, DAV typically provides more than 675,000 free rides for veterans attending medical appointments at VA medical facilities provided by DAV volunteers. Nearly 19 million rides have been provided by DAV through the years. Since the program's inception in 1987, DAV departments and chapters have donated 3,797 vehicles to the VA, at a cost of over $88 million, to provide these rides to our nation's ill and injured veterans. It is one of the country's largest voluntary transportation programs serving 228 VA medical centers and outpatient clinics.

4. Since being chartered by Congress in 1932, DAV has submitted over 11.8 million claims for benefits on behalf of veterans and their families. In 2020, DAV's professional veterans advocates—all wartime injured or ill veterans—filed nearly 140,000 new claims, which included claims for nearly 380,000 specific injuries or illnesses, with the Veterans Benefits Administration and obtained more than $23 billion in benefits for veterans and their families. Veterans do not have to be members to take advantage of our free assistance.

5. DAV is also a leader in connecting veterans with meaningful employment, hosting job fairs, and providing resources to ensure they have the opportunity to participate in the American Dream their sacrifices have made possible. Since 2014, over 240,000 active-duty,

Guard, and Reserve members, veterans and their spouses have connected with employers, resulting in more than 150,000 job offers. Moreover, in 2020 almost $2 million in COVID-19 unemployment relief was distributed nationwide to nearly 8,000 disabled veterans who lost employment or income in the wake of the virus outbreak.

6. In short, DAV empowers our nation's heroes and their families by helping to provide the resources they need and ensuring America keeps the promises made to them.

DAV Relies on Direct Mail

7. For DAV, hard copy mail is the primary, and donor preferred, channel we use to communicate with our active and prospective supporters (letters, calendars, name and address labels to encourage giving through the mail), members (magazines and newsletters) and volunteers). The average age of our constituents is 74 years and older. Those constituents trust fundraising requests for one time, monthly, and planned giving through USPS mail.

8. We mail approximately 80 million pieces of mail annually with nearly 3 million pieces of returned mail. Our data shows that over 90 percent of our donations are received from donors and members acquired through direct mail. Equally, over 90 percent of our donations come back to us through the mail.

9. In addition, hard copy mail gives us the opportunity to let disabled veterans know of our national and local programs and services. This is especially true for veterans living in rural areas, where broadband is not adequate or strong, something that was made abundantly clear to all of us during the pandemic.

The August 2021 Postage Rate Increases Will Irreparably Harm Our Ability to Serve Veterans

10. We have dire concerns about the negative impact the now-approved postage rate increases that are slated to take effect in late August will have on our ability to accomplish our mission in the near future. We estimate nearly half a million dollars in additional costs this year alone, and one and a half million dollars in additional costs in 2022.

11. These rate increases will force our organization to reduce mail volume, which will result in reduced revenue and will force us to consider reducing the number of rides provided to medical appointments, the career fairs that ensure meaningful employment, or the free benefits counseling services and disaster relief on which so many veterans depend.

12. The Postal Service has succeeded in generating the funds necessary to meet its ongoing operational needs, while also providing those that rely on mail with a stable and predictable rate structure. This year's rate increases were unpredictable, far above the cost of inflation, unfair and, frankly, unjust. It is critical to our organization's ability to continue to use and rely on the mail to generate the necessary revenue to support the needs of disabled veterans and their families that the proposed rate increases be rescinded.

I declare under penalty of perjury that the foregoing is true and correct.

Date

7/22/21

Signature

Tracy Burgoon

Tracey Burgoon

EXHIBIT 13

AFFIDAVIT

STATE OF WISCONSIN)
) **SS:**
COUNTY OF BROWN)

I, David Wood, of Green Bay, in Brown County, Wisconsin, MAKE OATH AND SAY THAT:

1. I am the Group Manager of Publications for Multi Media Channels LLC ("MMC"), a Wisconsin limited liability company.
2. MMC is engaged in the business of community newspaper publishing for cities, towns, and villages in the central, northern, and northeastern regions of Wisconsin.
3. MMC publishes 22 community newspapers in these regions of Wisconsin.
4. MMC's coverage area extends from east to west from Green Bay, Wisconsin, to Neillsville, Wisconsin, and from north to south from Minocqua, Wisconsin, to Mayville, Wisconsin.
5. MMC's coverage area totals 34,026 square miles.
6. Within its coverage area, MMC mails 238,123 newspapers using the Every Door Direct Mail ("EDDM") service of the Unites States Postal Service ("USPS"). These papers are processed and charged at the Destination Delivery Unit ("DDU") rate.
7. Within its coverage area, MMC mails 18,575 newspapers using Second Class service of the United States Postal Service.
8. The total number of newspapers mailed per week is 256,698.
9. There is no other economically viable alternative for MMC to deliver its newspapers.
10. Most of the communities MMC serves are small, rural, under 6,000 residents, and have low population density.
11. MMC is the only media provider in many of the communities it serves. For these communities, if MMC stops publishing, the community will become a "news desert."
12. Between April 1, 2020, and March 31, 2021, MMC paid $2,158,866 to the USPS. These fees were for postage costs only; they did not include any of MMC's other costs such as printing, processing, and delivering the newspapers to the local post offices.
13. MMC's postal payments were distributed among 80 local post offices in cities, towns, and villages in Wisconsin.
14. It is our belief and understanding that for most of these post offices, MMC was the largest single customer.
15. It is our belief and understanding that were MMC to cease mailing through these local post offices, these post offices would suffer a substantial revenue decline and be forced to cut costs by reducing

staff, hours of operation, services, or all of the above.

16. Our company has been notified of pending postage rate increases that will increase costs of our Periodicals publications by an average of 8.8 percent and our Marketing Mail publications by at least 6 percent.

17. The company estimates that these increases would add $194,298 in cost to MMC this year.

18. The additional cost would exceed MMC's average annual net earnings for 2018, 2019 and 2020 fiscal years and cause the company to continue to lose money even with planned efficiency changes to our operation.

19. To maintain continued viability, MMC will be forced to make irreparable changes to its publications and operations by reducing news coverage and providing less service to our customers. In MMC's experiences, lost customer relationships driven by cuts in our news coverage are irreversible. Lost news coverage is irreversible for the time in which coverage is not provided. MMC believes these changes, while necessary, will cause irrevocable harm to our company, our work force, our customers and our readers.

20. If these postage increases go into effect on August 29, MMC will eliminate:
    a. Three editorial positions costing a total of $120,000 in salary, benefits and taxes.
    b. Three customer service positions, costing a total of $81,000 in salary, benefits and taxes.

STATE OF WISCONSIN)
) **SS:**
COUNTY OF BROWN)

Personally came before me this 1st day of July, 2021, the above named David Wood, to me known to be the person who executed the foregoing instrument and acknowledged the same.

MISTY HOLZMAN
Notary Public
State of Wisconsin

Dave Wood

Misty Holzman

My commission expires: 1/1.24.2024

EXHIBIT 14

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

National Postal Policy Council, *et al.*, Petitioners v. Postal Regulatory Commission, Respondent.	Nos. 17-1276, 20-1505, 20-1510, 20-1521 (consolidated)

Declaration of Jamie Trowbridge

I, Jamie Trowbridge, declare as follows:

1. I am the President and CEO of Yankee Publishing, Inc. ("Yankee"). Founded in 1935, Yankee is a New Hampshire-based and family-owned company. It is the publisher of *Yankee* magazine and other titles such as the Old Farmer's Almanac and *New Hampshire* magazine.

***Yankee* Magazine Depends on U.S. Postal Service Delivery**

2. *Yankee*, our primary title, is a bimonthly magazine about lifestyle, travel, and culture in New England. It has a print circulation of approximately 300,000. Subscriptions make up 73 percent of the magazine's revenue, making *Yankee* highly dependent on the Postal Service ("USPS") as a business. New subscriptions are marketed to customers via mail, subscription renewals and invoices are sent via mail, and the magazines are delivered to subscribers via mail.

3. Although *Yankee* has a digital business in its website NewEngland.com, we have not been successful, despite many efforts, to transition print subscribers to digital readership. Our magazine customers prefer print, and that has made it difficult to sustain this 86-year-old business. While the cost to manufacture and distribute the magazine keeps increasing, our customers remain price sensitive when it comes to renewing their subscriptions.

Our Business Will Be Immediately Harmed By The Announced USPS Price Increases

4. While we have made progress recently in improving *Yankee's* profitability after many years of losses, the business is still barely profitable after corporate allocations. The annual impact of the price increase USPS is planning on *Yankee* magazine is substantial and will make it difficult for *Yankee* as a business to achieve profitability in the coming year.

5. The increase in postal rates that were approved for August 29, 2021 will have an immediate impact on our business. Postage is our biggest production expense, representing 43 percent of *Yankee's* cost for printing, paper, and mailing. The total additional postal cost we are

anticipating in the coming year is $93,727, which accounts for about half of the small profit we are forecasting for *Yankee* in the fiscal year just ended. These increased postal costs will be comprised of:

(a) Mailing copies to subscribers: We calculate the rate increase to be 6.4 percent for *Yankee*, with an annual cost of $40,900;

(b) Acquiring direct mail subscribers: We send over 1.5 million direct mail solicitations a year. We calculate the rate increase to be 6.8 percent, with an annual cost of $28,488; and

(c) Mailing renewal notices and bills: An annual rate increase of 6.8 percent, translating to an increase in cost of $24,339.

6. There is nothing we can do to avoid this cost or recover from it. We certainly cannot pass the increased postage rates onto our subscribers. We test our pricing with every direct mail solicitation, and we know our subscribers will not pay more. Our top subscription rate is already $29.97 for six issues.

7. Direct mail is still our primary source of new subscriptions. Our alternative sources of subscriptions are not good enough to reduce or eliminate our use of direct mail. The same is true for renewal notices and invoices. We have tried to convert these communications to email, but most *Yankee* customers will not give us their email addresses and those who have given us their emails do not respond well to email solicitations.

8. The USPS has not given any incentives in its rate structure that allow us to mitigate the increase. The rates for Zones 1 and 2 increased the same amount as the other zones, so there is no more incentive than we already had for delivering the mail closer to the delivery point. The increased cost of trucking makes delivery closer to the delivery point infeasible in any event.

9. The only remaining option to reduce our postal cost is to reduce the number of pages of the magazine. We have done this over the years, but it would be counterproductive to reduce our pages any further because we are already at the minimum size to co-mail *Yankee* with other magazines from our printer.

10. Ultimately, the only way we will be able to offset the cost of the postal price increase – and future postal increases – is by eliminating jobs.

I declare under penalty of perjury that the foregoing is true and correct.

Date: July 20, 2021

Signature: J. R. Trowbridge

Jamie Trowbridge

EXHIBIT 15

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Alliance of Nonprofit Mailers, Association for Postal Commerce, MPA – The Association of Magazine Media, American Catalog Mailers Association, *Petitioners*, v. Postal Regulatory Commission, *Respondent*.	)))))))))))))	Case No. 20-1510

DECLARATION OF JOHN HAMRE
ON BEHALF OF WOUNDED WARRIOR PROJECT, INC.

I, John Hamre, declare as follows:

1. I am Vice President – Resource Development: Direct Response for Wounded Warrior Project, Inc. ("WWP"). WWP is a not-for-profit corporation exempt from income tax under Internal Revenue Code Section 501(c)(3), and is headquartered in Jacksonville, FL. My business address is 370 Seventh Avenue, Suite 1802, New York, NY 10001.

2. I have worked for WWP for over 13 years and have served in my current position for over 10 years. As Vice President – Resource Development: Direct Response, I lead and manage WWP's direct response team, which handles all fundraising solicitations delivered through direct mail, online platforms, and direct response television.

3. Since 2015, I have also served as a member-at-large on the Board of Directors for the Alliance of Nonprofit Mailers ("ANM"). As a Board member, I help guide the strategic planning for ANM's mission to preserve affordable, reliable postal services so that our nation's nonprofit sector can continue to fulfill vital missions.

4. Between my position at WWP and role on the ANM Board of Directors, I draw from over 25 years of personal experience working in the nonprofit direct mail industry and advocating for affordable rates and reliable service from the United States Postal Service.

5. WWP was established in 2003 with a mission to honor and empower wounded warriors and a vision to foster the most successful, well-adjusted generation of wounded service members in our nation's history. WWP provides more than 20 life-changing programs

and services to over 195,000 registered post-9/11 warriors and their families. Through its programs, WWP connects these individuals with each other and their communities; serves them by providing physical and mental health programs, job placement services, and federal benefits assistance; and empowers them to live life on their own terms. All of WWP's programs are provided at no charge to veterans or their families.

6. In Fiscal Year 2020 (October 1, 2019 to September 30, 2020), WWP spent approximately $197 million on programs and services for wounded warriors, Service members, and their families. Across our programming landscape, WWP hosted more than 4,300 virtual and in-person events to keep warriors connected; facilitated over 900 warrior-only peer-to-peer support group meetings; provided more than 149,500 hours of mental health treatment across our continuum of mental health care and support programs; connected more than 1,850 warriors and family members to meaningful employment with veteran-friendly employers; delivered over 190,000 hours of in-home and local care through our Independence Program to the most severely injured warriors, helping them reach and maintain a level of autonomy that would not otherwise be possible; and extended more than $11 million in direct COVID-19 relief payments to help 11,000 warriors in financial crisis cover food and shelter expenses during the public health emergency.

7. Because WWP relies on direct mail campaigns, higher postage rates will limit our reach and reduce the net revenue that our organization can spend on life-changing programs and services.

8. Direct mail has been and continues to be a key component of WWP's success in raising the funds necessary to honor and empower wounded warriors. In Fiscal Year 2020, WWP delivered over 102 million pieces of mail to the public to raise awareness and resources for our organizations programs and services.

9. Since its founding in 2003, WWP has raised $1 billion through direct mail solicitations, which amounts to 33 percent of all money raised. In Fiscal Year 2020 alone, direct mail solicitations returned over $92 million, or approximately 34 percent of WWP's annual income. Many who receive direct mail solicitations eventually become sustaining donors who support WWP with monthly donations. Such contributions constituted an additional 22 percent of WWP's annual income.

10. Postage increase will reduce WWP mailing volume. WWP strives to maximize the impact of every dollar spent and continually measures the return of direct mail campaigns and makes modifications such as reducing the frequency of direct mail campaigns and curtailing the number of direct mail recipients. When we do not grow our acquisition base through direct mail, we face reduced capacity to raise funds for programs and services.

11. Applying the U.S Postal Service's proposed increases to nonprofit automated letters and increased stamp premiums on WWP's Fiscal Year 2020 direct mail activity would have resulted in approximately $1.7 million less revenue to support WWP's mission. This level of funding would support approximately 680 warriors' participation in Soldier

Ride®, a unique multi-day cycling event that helps warriors build their confidence and strength through shared physical activities and bonds of service in a supportive environment. Similarly, this level of funding can support 77 warriors to receive mental health treatment through Warrior Care Network, a partnership between WWP and four world-renowned academic medical centers to heal invisible wounds of service and improve the psychological healing of our nation's veterans. Participating warriors receive a year's worth of mental health care during a 2–3-week intensive outpatient program, using evidence-based treatments with alternative therapies.

12. Alternative solicitation methods cannot replace the value of direct mail to WWP's donor audience. Online and e-mail outreach is limited to those who have an e-mail address. WWP's donor base skews demographically toward the elderly, many of whom do not use e-mail. Those in our donor base who do not have an e-mail address are typically unwilling to donate online with a credit card. In contrast, direct mail puts information directly into the hands of our supporters and allows them to maintain it for future reference. Our fundraising would suffer and limited the critical programs and services we offer to wounded warriors, Service members, their families, and their caregivers.

13. While investment in the U.S. Department of Veterans Affairs (VA) continues to grow, non-profit organizations have been recognized as a critical partner in providing supplementary support and outreach that the federal government simply cannot provide. The Commander John Scott Hannon Veterans Mental Health Improvement Act (P.L. 116-171) recently recognized the particular importance of non-profits in reducing veteran suicide. 11 out of every 17 veterans who died by suicide in 2017 were not connected to VA, and non-profits can provide both a critical link to emergency services and upstream support to address a range of challenges before they become too much to bear.

14. A strong network of care and support is vital to the health and well-being of America's veterans. As the non-profit sector continues to evolve to meet needs at both a local and national scale, dramatic changes to the cost of doing business have the potential to limit the reach of awareness campaigns, reduce the quality of available services, and lessen the return on generosity provided by a patriotic community hoping to give back to those who have selflessly served their country.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 22, 2021.

John Hamre
Wounded Warrior Project, Inc.

EXHIBIT 16

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

National Postal Policy Council, *et al.*, Petitioners v. Postal Regulatory Commission, Respondent.	Nos. 17-1276, 20-1505, 20-1510, 20-1521 (consolidated)

Declaration of Thomas H. Harty in Support of Motion for Stay

I, Thomas H. Harty, declare as follows:

1. I am the Chairman, CEO, and President of Meredith Corporation ("Meredith" or the "Company"). I have served as the CEO and President since 2018 and as Chairman since 2020. I have been a director of the Company since 2017. I was President of Meredith's National Media Group from 2010 – 2016. I joined Meredith in 2004.

2. Meredith is a publicly-traded media and marketing company headquartered in Des Moines, Iowa with an approximately $2 billion market cap.

3. Meredith operates two groups: the national media group, which consists of digital and magazine businesses, and the local media group. The national media group includes leading national consumer media brands delivered via multiple media platforms, including print magazines, digital and mobile media, brand licensing activities, database-related activities, affinity marketing, and business-to-business marketing products and services.

4. The national media group contributed approximately 65 percent of Meredith's consolidated revenues in fiscal year 2021, ending June 30, 2021.

5. Meredith is the largest magazine publisher in the U.S., measured by both revenue and audience reach. Meredith published approximately 30 subscription magazines in fiscal year 2021, including Better Homes & Gardens, People, Southern Living, Shape, Parents, Martha Stewart Living, Real Simple, EatingWell, In Style, and Entertainment Weekly, and over approximately 300 special interest publications. Two of Meredith's most popular magazines, Better Homes & Gardens and People, have a "rate base" guaranteed circulation for advertisers, of approximately 7.6 million and 3.4 million, respectively. In total, Meredith mailed approximately 475 million individual magazines through the United States Postal Service ("USPS") in fiscal year 2021.

6. Meredith's digital business includes web, mobile, video, social, audio, and over-the-top content. Meredith owns and operates 50 websites serving an average of approximately 150 million unique visitors each month and produces digital magazine editions.

Meredith's Print Magazine Business Relies on the Postal System

7. Meredith's print magazine business relies on USPS. Over 90% of Meredith's magazines are sold by subscription, and most subscriptions are delivered through the mail.

8. Indeed, Meredith's magazines reach 100 million consumers every month. Meredith had approximately 36 million active subscriptions at December 31, 2020, and the majority of Meredith's subscription brands are issued between six and 12 times annually. On average, Meredith sells more than approximately 30 subscriptions every minute.

9. Meredith continually seeks the most economical and effective methods for mail delivery, including cost-saving strategies that leverage work-sharing opportunities within the Postal Service.

10. Still, postage is a significant expense of the magazine segment. Periodical postage accounts for approximately 80 percent of Meredith's postage costs, while postage costs for other mail items—direct mail, replies, and bills—account for approximately 20 percent.

11. Meredith mail generated approximately $145 million in USPS revenue in fiscal year 2021. Of that total, Periodicals class mail comprised approximately $120 million, with approximately $25 million spent on First Class and Marketing Mail lettermail in support of the magazines.

Impact of the Proposed Price Increase

12. Meredith has actively worked independently and with others, including through industry trade organizations, to encourage and help the USPS to find and implement efficiencies to contain rate increases. In years past, we filed comments with the Postal Regulatory Commission in which we stated that the then-proposed rate increases would cause us and our customers significant harm, including potential magazine closures, circulation cuts, issue frequency reductions, and diversion away from physical mail channels.

13. Still, postage prices have risen in each of the last three years. The most recent rate change was an increase of approximately 1.8 percent for First-Class Mail and 1.5 percent for other categories effective January 2021. On May 28, 2021, the USPS filed a notice of additional and much higher price increases to take effect August 29, 2021. The Postal Regulatory Commission approved these price increases on July 19, 2021. We understand the price increase to be the largest percentage increases to date.

14. The price increase on postage will affect Meredith's individual magazines differently depending on each title's characteristics (such as, for example, its circulation and

weight). Even with Meredith's scale and efficient mailing practices, we estimate that the impact on our individual magazines' spend will range from approximately 5 to 13 percent, with Meredith's postage costs for Periodicals increasing by approximately 6 percent. We further estimate that these price increases will result in Meredith's First Class and Marketing Mail postage costs to increase by approximately 7 percent each. In addition, we expect that the approved price increases will result in higher subscription rates for consumers, which will result in reduced direct mail responses and renewals, and further drive up Meredith's circulation related costs. This will require Meredith to take increasingly aggressive cost saving actions.

15. Historically, Meredith has been able to significantly mitigate postage increases through aggressive cost reductions in paper and print and by partnering with our vendors to develop creative preparation initiatives that make our mailings more efficient and less costly for the USPS. In today's leaner business environment, particularly with the COVID-19 pandemic and contraction in the paper and printing industries, cost reduction opportunities are more limited.

16. With the postal price increases, Meredith will be left with no option other than to consider: reducing print circulation, diverting magazine delivery in high-density areas to more economical but less consumer-friendly delivery options, and/or moving even more aggressively into digital platforms. We estimate the proposed price increases will result in an approximately 30 percent reduction in our mailpiece volume.

17. The price increases will significantly impact consumers. First, these price increases will be passed on to consumers as they bear some of the increased costs to Meredith. Second, Periodicals mail has significant value to the American people. Postal customers look forward to receiving their print magazines and having their "mailbox moment." This proposed price increase would impede the ability of mail with unique educational, cultural, scientific, and informational value to reach its readers. We expect that certain demographics of consumers, such as those in rural communities or the elderly, would be particularly impacted as they are less easily able to switch to digital content if Meredith were to reduce its print circulation.

I declare under penalty of perjury that the foregoing is true and correct.

Date Signature

___7/23/21________

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Thomas H. Harty
Chairman, President, CEO, Meredith Corporation