

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

---

**BRIEF FOR PETITIONER**

---

JOEL B. ROTHMAN  
JEROLD I. SCHNEIDER  
SCHNEIDER ROTHMAN  
INTELLECTUAL PROPERTY  
LAW GROUP, PLLC  
4651 N. Federal Highway  
Boca Raton, Florida 33431  
(561) 404-4350

AARON M. PANNER  
*Counsel of Record*  
GREGORY G. RAPAWY  
GRACE W. KNOF CZYNSKI  
KELLOGG, HANSEN, TODD,  
FIGEL & FREDERICK, P.L.L.C.  
1615 M Street, N.W.  
Suite 400  
Washington, D.C. 20036  
(202) 326-7900  
(apanner@kellogghansen.com)

August 27, 2018

---

---

## QUESTION PRESENTED

Section 411(a) of the Copyright Act provides (with qualifications) that “no civil action for infringement of [a] copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title.” 17 U.S.C. § 411(a). The question presented is:

Whether “registration of [a] copyright claim has been made” within the meaning of § 411(a) when the copyright holder delivers the required application, deposit, and fee to the Copyright Office, as the Fifth and Ninth Circuits have held, or only once the Copyright Office acts on that application, as the Tenth Circuit and, in the decision below, the Eleventh Circuit have held.

## **PARTIES TO THE PROCEEDINGS**

Petitioner Fourth Estate Public Benefit Corporation was the plaintiff and the appellant in the proceedings below.

Respondents Wall-Street.com, LLC and Jerrold D. Burden were the defendants and the appellees in the proceedings below.

**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.

## TABLE OF CONTENTS

	Page
QUESTION PRESENTED .....	i
PARTIES TO THE PROCEEDINGS .....	ii
RULE 29.6 STATEMENT .....	iii
TABLE OF AUTHORITIES .....	vi
INTRODUCTION .....	1
OPINIONS BELOW .....	3
JURISDICTION.....	3
STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT.....	3
A. Statutory Background .....	3
B. Factual Background.....	15
C. Proceedings Below .....	16
SUMMARY OF ARGUMENT .....	18
ARGUMENT.....	21
I. THE STATUTORY TEXT MAKES CLEAR THAT THE COPYRIGHT OWNER MAKES REGISTRATION FOR PURPOSES OF § 411(a) BY COMPLYING WITH THE STATUTE’S REQUIREMENTS .....	21
A. The Statute Employs the Phrase “Make Registration” and Its Vari- ants To Refer to the Actions of the Copyright Owner .....	21

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.