

IN THE SUPREME COURT OF THE UNITED STATES

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No. 18-481

FOOD MARKETING INSTITUTE, PETITIONER

v.

ARGUS LEADER MEDIA, DBA ARGUS LEADER

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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MOTION OF THE UNITED STATES  
AS AMICUS CURIAE SUPPORTING PETITIONER  
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT  
AND FOR DIVIDED ORAL ARGUMENT

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Pursuant to Rules 21, 28.4, and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioner and requests that the United States be allowed ten minutes of argument time. Petitioner has consented to cede ten minutes of its time to the United States.

This case under the Freedom of Information Act (FOIA), 5 U.S.C. 552, concerns the scope of FOIA Exemption 4, which exempts from FOIA matters that are "trade secrets and commercial or financial

information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4). More specifically, the case concerns whether certain records of the United States Department of Agriculture (USDA) constitute “confidential” commercial or financial information. USDA determined that those records were exempt from mandatory FOIA disclosure under Exemption 4, and defended its decision in district court in this case, although the government did not appeal the district court’s decision requiring disclosure. More generally, the United States, whose agencies are the defendants in all FOIA actions, has a substantial interest in FOIA’s proper interpretation.

Although respondent’s merits brief invokes the government’s brief to support its position, the government supports petitioner both on the question of Article III jurisdiction in this case and on the application of Exemption 4 to the agency records at issue. For that reason, the United States requested that petitioner (not respondent) cede 10 minutes of its time. Petitioner has consented to cede that time to the United States.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

MARCH 2019