

DISTRICT OF COLUMBIA COURT OF APPEALS

**IN RE: FACEBOOK, INC.,
APPELLANT,

v.

UNITED STATES OF AMERICA,
APPELLEE.**

Case Nos. 17-SS-388,
17-SS-389,
17-SS-390

NOTICE TO POTENTIAL *AMICI CURIAE*

Notice is hereby given that any parties wishing to file briefs as *amici curiae* in support of Appellant Facebook, Inc. (“Facebook”) in this otherwise sealed matter shall do so on or before June 30, 2017. The following Abbreviated Statement of Facts and Statement of Issues have been prepared by Facebook. Appellee the United States of America may file its own proposed form of Notice to Potential *Amici Curiae* at a future date.

FACEBOOK’S ABBREVIATED STATEMENT OF FACTS

This matter involves three search warrants (the “Warrants”) issued to Facebook in connection with an investigation into potential felony charges. The Warrants seek all contents of communications, identifying information, and other records related to three Facebook accounts for a specified three-month period of time. The Warrants are accompanied by a non-disclosure order issued by the Superior Court pursuant to 18 U.S.C. § 2705 (the “NDO”) requiring that Facebook

and its employees not disclose the existence of the Warrants to anyone before Facebook produces documents and information to the government in response to the Warrants. In light of the Warrants' potential impact on the First Amendment rights of its users, Facebook moved to vacate the NDO on the grounds that it did not withstand strict scrutiny under the First Amendment. Because Facebook believed that neither the government's investigation nor its interest in Facebook user information was secret, Facebook moved to vacate the NDO so that it could provide its users with notice of the Warrants and an opportunity to object to them before Facebook produced responsive records to the government. Facebook also preserved records responsive to the Warrants pending the outcome of its litigation.

On April 3, 2017, the Superior Court denied Facebook's motion (the "April 3rd Order"), directed Facebook to produce information responsive to the Warrants, and amended the NDO so that it expires 30 days following the government's receipt of Facebook's production. Facebook and the government subsequently agreed to stay the April 3rd Order pending the resolution of this appeal.

FACEBOOK'S STATEMENT OF THE ISSUES

1. Whether the NDO prohibiting Facebook from notifying the subjects of the Warrants violates Facebook's First Amendment rights where the events underlying the government's investigation are generally known to the public, and Facebook has preserved all records responsive to the Warrants.

2. Whether the users affected by the Warrants are entitled to have notice and an opportunity to contest the Warrants when their First Amendment right to engage in anonymous political speech and association will be vitiated if Facebook is required to produce the requested records.