

In accordance with Fed. R. App. P. 29(b), The Reporters Committee for Freedom of the Press and 46 media organizations (collectively, the “*amici*” or “*amici curiae*”) respectfully move the Court for leave to file a brief as *amici curiae*¹ in support of Non-Party Movant-Appellee Jesse Eisinger (“Eisinger”). The proposed brief accompanies this motion and urges the Court to affirm the District Court’s order. Counsel for *amici* obtained the consent of Counsel for Defendants-Appellees and Counsel for Eisinger, but Counsel for Plaintiffs-Appellants declined to consent to the proposed filing of this brief.

The New York shield law protects reporters from compelled testimony about unpublished information obtained during newsgathering activities, even if the

¹ *Amici* are The Reporters Committee for Freedom of the Press, ABC, Inc., Advance Publications, Inc., A. H. Belo Corporation, Allbritton Communications Company, ALM Media, LLC, American Society of News Editors, The Associated Press, Association of Alternative Newsweeklies, The Association of American Publishers, Inc., Association of Capitol Reporters and Editors, Atlantic Media, Inc., Bay Area News Group, Belo Corp., Bloomberg L.P., Cable News Network, Inc., CBS Broadcasting Inc., Citizen Media Law Project, Cox Media Group, Inc., Daily News, L.P., The E.W. Scripps Company, First Amendment Coalition, First Amendment Project, Gannett Co., Inc., Hearst Corporation, LIN Media, The McClatchy Company, Media General, Inc., National Press Photographers Association, NBCUniversal Media, LLC, The New York Times Company, Newspaper Association of America, The Newspaper Guild – CWA, The Newsweek/Daily Beast Company LLC, North Jersey Media Group Inc., NPR, Inc., Online News Association, POLITICO LLC, Radio Television Digital News Association, Reuters America LLC, The Seattle Times Company, Society of Professional Journalists, Stephens Media LLC, Time Inc., Tribune Company, The Washington Post and WNET. The description, counsel listing and corporate disclosure statement of each of the *amici* are set forth in the accompanying brief or addendum thereto.

disclosure is of material for which confidentiality was not promised. The extension of this privilege beyond just the identity of confidential sources to include non-confidential unpublished material underlying a finished journalistic product is a legislative acknowledgement that *any* media subpoena significantly burdens the press.

These detrimental effects — on newsroom time and already-limited newsroom budgets; on news coverage and other editorial procedures; on cultivation of relationships with potential sources; and on maintenance of an independent and neutral press — are not exclusive to subpoenas seeking confidential material. Indeed, requiring reporters to even appear for deposition or trial testimony where any of the questions will or are likely to touch on non-confidential unpublished information, as is the case here, is a major burden to journalistic endeavors. As such, *amici* are concerned that if this Court were to adopt Plaintiffs-Appellants' argument that the shield law does not apply to the testimony they seek from Eisinger or that they did indeed meet the standard required to overcome it, the news media's status as an independent and objective check on governmental power would be severely threatened. Accordingly, the resolution of this case has significant implications for press freedoms.

Amici curiae offer unique and valuable perspectives on the issues before the Court in this case.² As established media organizations and advocates for the rights of the news media, *amici* are acutely aware of the necessity of the shield law to the maintenance of a robust press and the need for its faithful enforcement. As compelling evidence of this need, *amici* present in their brief several examples of the hardships that subpoenas for non-confidential unpublished information impose on the journalists who have the constitutionally protected freedom to gather and report it. Thus, the accompanying brief *amici curiae* “will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.” *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003).

² Until recently, the biennial survey conducted by lead *amicus curiae* The Reporters Committee for Freedom of the Press assessing the frequency and impact of media subpoenas nationwide was the most significant and comprehensive attempt to quantify and qualify the issue.

For the foregoing reasons, *amici curiae* respectfully request that this motion for leave to file the accompanying brief as *amici curiae* be granted.

Dated: July 1, 2011
Arlington, VA

Respectfully submitted,

By: /s/ Lucy A. Dalglish

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2011, I

- Caused to be served for filing with the United States Court of Appeals for the Second Circuit the foregoing motion for leave to file brief *amici curiae* via the CM/ECF case filing system; and
- Caused to be served the foregoing motion for leave to file brief *amici curiae* on counsel of record in this case via the CM/ECF case filing system. All counsel of record, listed below, are registered CM/ECF users:

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