
New York Supreme Court

Appellate Division—First Department

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SUP COURT APP. DIV.
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JUSTINE LUONGO, ATTORNEY-IN-CHIEF, CRIMINAL DEFENSE PRACTICE, LEGAL
AID SOCIETY

Petitioner-Respondent,

– against –

RECORDS ACCESS OFFICER, CIVILIAN COMPLAINT REVIEW BOARD,

Respondent-Appellant,

-and-

OFFICER DANIEL PANTALEO

Respondent-Intervenor-Appellant.

BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 20 MEDIA ORGANIZATIONS* IN SUPPORT OF PETITIONER-RESPONDENT

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IDENTITY OF AMICI CURIAE

Amici are the Reporters Committee for Freedom of the Press, Advance Publications, Inc., The Associated Press, BuzzFeed, Daily News, LP, Dow Jones & Company, Inc., The E.W. Scripps Company, First Look Media Works, Inc., Gannett Co., Inc., Gawker Media LLC, Hearst Corporation, MPA – The Association of Magazine Media, The National Press Club, National Press Photographers Association, The New York Times Company, News 12 Networks, LLC, The News Guild – CWA, Newsday LLC, Online News Association, Radio Television Digital News Association, and the Tully Center for Free Speech. *Amici* are described in Appendix A.

As representatives and members of the news media, *amici* frequently rely on state and federal freedom of information laws, including New York’s Freedom of Information Law, N.Y. Pub. Off. Law §§ 84-90 (“FOIL”), to gather information about the government and report on matters of vital public concern. *Amici* thus have a strong interest in ensuring that such laws are interpreted by courts as they were intended, in a manner that facilitates public access to government records and assures government accountability.

The Supreme Court, New York County, correctly interpreted FOIL as requiring the New York Civilian Complaint Review Board (“CCRB”) to release a numerical summary of substantiated complaints relating to Officer Daniel Pantaleo

(“Pantaleo”) before the death of Eric Garner in July of 2014, and any recommendations the CCRB made to the New York City Police Department (“NYPD”) on the basis of those substantiated complaints. *Amici* urge this Court to affirm the trial court’s decision and write (1) to emphasize the importance of interpreting exceptions to FOIL’s statutory right of access—including Civil Rights Law § 50-a—narrowly, and (2) to highlight for the Court, from the perspective of the news media, the vital role that FOIL plays in keeping the public informed.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

At issue in this case is whether the CCRB is permitted, pursuant to Public Officers Law § 87(2)(a) and Civil Rights Law § 50-a (“CRL 50-a”), to withhold (1) a summary of the number of substantiated complaints brought against Officer Pantaleo before Eric Garner’s death, and (2) recommendations made by the CCRB to the NYPD as a result of those complaints (collectively, the “Complaints Summary”) in response to a request under New York’s Freedom of Information Law, N.Y. Pub. Off. Law §§ 84-90, (“FOIL”). Citing the broad presumption of access to agency records under FOIL and Appellants’ inability to show the applicability of CRL 50-a to the requested records, the Supreme Court below correctly ordered the CCRB to release the Complaints Summary. *Amici* urge this Court to affirm that decision.

FOIL reflects this State’s “strong commitment to open government and public accountability and imposes a broad standard of disclosure upon the State and its agencies.” *Matter of Capital Newspapers v. Burns*, 67 N.Y.2d 562, 565 (1986) (citations omitted); *Matter of Fink v. Lefkowitz*, 47 N.Y.2d 567, 571 (1979) (FOIL “proceeds under the premise that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government”). Upon request, agencies are required to “make available for public inspection and copying all records,” unless they are specifically exempt from disclosure. FOIL

§87(2). All exemptions to disclosure under FOIL must be “narrowly construed to provide maximum access” *Burns*, 67 N.Y.2d at 566 (citations omitted).

Section 87(2)(a) of FOIL permits agencies to deny access to records that are “specifically exempted from disclosure by state or federal statute.” CCRB argued below, and continues to contend on appeal, that CRL § 50-a—which provides in pertinent part that “[a]ll personnel records used to evaluate performance toward continued employment or promotion” of a police officer are exempt from disclosure absent the express written consent of such police officer, or “as may be mandated by lawful court order”—is a statute specifically exempting the Complaints Summary from disclosure under FOIL.

As the trial court below correctly recognized, however, CRL 50-a is not a monolithic exemption to FOIL forever barring the disclosure of all information relating to police conduct. Rather, it applies only to “personnel records”—which the Complaints Summary is not—and, even then, its secrecy provisions “must be tempered when it interacts with the competing, equally strong legislative policy of open government through broad public access to governmental agency records embodied in the FOIL legislation.” *Daily Gazette Co. v. City of Schenectady*, 93 N.Y.2d 145, 157 (1999) (citations omitted). A narrow construction of CRL 50-a—one that prohibits the disclosure only of police “personnel records used to evaluate performance toward continued employment or promotion,” and only when there is

a “substantial and realistic potential” that the requested material will be used “in litigation to degrade, embarrass, harass or impeach the integrity of the officer”—is not only compelled by relevant precedent and statutory language, it is required to ensure that FOIL’s promise of transparency and official accountability is realized. *See id.* at 157–158, 159.

Members of the news media routinely rely on FOIL to gather information concerning government agencies, including law enforcement agencies like the NYPD, on behalf of the public. Records obtained through FOIL fuel stories that promote informed public discussion and debate on the policies and actions of the NYPD, the largest municipal police force in the United States. The particular FOIL request at issue in this case stems from the high-profile death of Eric Garner, a Staten Island resident who died after being placed in a chokehold by Officer Pantaleo in July of 2014. Mr. Garner’s death, captured by multiple bystanders with cellphone cameras, is one of a number of incidents that sparked an ongoing national discussion about the relationship between race and policing, and, in particular, the use of excessive force against individuals of color. Two years later, the circumstances surrounding Mr. Garner’s death remain of the utmost public interest and concern.

FOIL is a “remarkably effective device in exposing waste, negligence and abuses on the part of government; in short, ‘to hold the governors accountable to

the governed.’’ *Fink*, 47 N.Y.2d at 571 (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)). The statute’s capacity to serve these ends, however, is dependent on judicial enforcement of its requirements and recognition of the strong presumption of public access it creates. For the reasons set forth herein, *amici* urge this Court to affirm the decision of the Supreme Court requiring disclosure of the Complaints Summary.

ARGUMENT

I. CRL 50-a DOES NOT IMPOSE BLANKET SECRECY ON ALL RECORDS RELATING TO POLICE CONDUCT.

A. The scope of CRL 50-a must be narrowly interpreted to provide maximum access to agency records under FOIL.

The Court of Appeals has repeatedly made clear that all exemptions to disclosure under FOIL must be narrowly interpreted to afford maximum public access to government records. *See, e.g., Washington Post Co. v. N.Y. State Ins. Dep’t*, 61 N.Y.2d 557, 564 (1984) (“FOIL is generally liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government.”); *Russo v. Nassau Cnty. Cmty. Coll.*, 81 N.Y.2d 690, 697 (1993) (same); *Prisoners’ Legal Servs. v. N.Y. State Dep’t of Corr. Servs.*, 73 N.Y.2d 26, 30 (1988) (same); *Matter of Capital Newspapers v. Whalen*, 69 N.Y.2d 246, 252 (1987) (same); *Burns*, 67 N.Y.2d at 566 (same); *M. Farbman & Sons, Inc. v. N.Y. City Health & Hosp. Corp.*, 62 N.Y.2d 75, 80 (1984) (same). Because

“blanket exemptions for particular types of documents are inimical to FOIL’s policy of open government,” the burden is placed on the agency to “articulate [a] ‘particularized and specific justification’ for not disclosing requested documents.” *Gould v. N.Y. City Police Dep’t*, 89 N.Y.2d 267, 275 (1996) (citations omitted) (quoting *Fink*, 47 NY2d at 571).

In accordance with these principles, the Court of Appeals has concluded that CRL 50-a is not to be construed as an absolute exemption to disclosure for police “personnel records”—let alone for *all* records concerning the conduct of police officers. *See Daily Gazette*, 93 N.Y.2d at 157. Instead, in order to be consistent with FOIL’s “strong legislative policy of open government[,]” *id.*, CRL 50-a must be construed narrowly to permit only the withholding of police “personnel records used to evaluate performance toward continued employment or promotion” requested under FOIL, and only “to the extent reasonably necessary to effectuate the purposes of Civil Rights Law § 50-a—to prevent the potential use of information in the records in litigation to degrade, embarrass, harass or impeach the integrity of the officer.” *Id.* at 157–58.

B. The trial court’s ruling below properly construes the scope of CRL 50-a in light of FOIL’s mandate of disclosure.

As the Supreme Court below correctly recognized, CRL 50-a may only be invoked to withhold records requested under FOIL if two requirements are met: (1) the agency has satisfied its burden to demonstrate that the requested information is

a “personnel record” within the meaning of CRL 50-a, *see Matter of Luongo v. Records Access Officer*, 49 Misc. 3d 708, 714 (Sup. Ct. N.Y. Cnty. 2015), and (2) the agency has met its burden to “demonstrate a substantial and realistic potential of the requested material for the abusive use against the officer” in litigation, *Daily Gazette*, 93 N.Y.2d at 159.

First, the trial court correctly concluded that the CCRB failed to meet its threshold burden of establishing that the Complaints Summary, “which would be generated by CCRB—a city agency independent of the NYPD—” constitutes a “personnel record.” *See Matter of Luongo*, 49 Misc. 3d at 715–16. There is no dispute that it was Appellants’ “initial burden” to “show that the subject documents are personnel records . . . covered by [CRL 50-a]”—i.e., that they are (1) personnel records (2) “used to evaluate the performance of police officers and their eligibility to continue in their employment or be promoted[.]” *Id.* at 714; *see also Matter of Capital Newspapers v. City of Albany*, 15 N.Y.3d 759, 761 (2010) (holding that the City of Albany failed to meet its burden of demonstrating that the gun tags at issue were “personnel records” under CRL 50-a because the “Police Chief’s conclusory affidavit did not establish that the documents were ‘used to evaluate performance toward continued employment or promotion’”). And, as set forth in the trial court’s opinion and in Appellee’s brief on appeal, Appellants

failed to meet that burden. For that reason alone, the trial court’s decision should be affirmed.

To conclude, as Appellants urge, that any record pertaining to the conduct of an officer, even those created by an independent agency that is not part of the police department, are “personnel records” would be inconsistent with the purposes of FOIL and CRL 50-a, as well as precedent from the Court of Appeals. *See generally Prisoners’ Legal Servs.*, 73 N.Y.2d at 36 (Titone, J., dissenting) (warning that an overly broad interpretation of “personnel records” is inconsistent “with the sound public policies that underlie FOIL”). Put differently, an unbounded interpretation of the term under which all material relating to an officer’s conduct is deemed a “personnel record” would disrupt the balance that the Court of Appeals has instructed must be maintained between FOIL and CRL 50-a. *See Daily Gazette Co*, 93 N.Y.2d at 157. After all, if a basic summary from the CCRB consisting of “only a few sentences summarizing the existence, number and outcomes of civilian complaints concerning on-duty conduct by an active officer” constitutes a “personnel record” within the meaning of CRL 50-a, it is difficult to imagine what information relating to a police officer does not. (R. 83).

Second, even assuming, *arguendo*, that the Complaints Summary were a “personnel record” within the meaning of CRL 50-a, its withholding would be permissible under FOIL only “to the extent reasonably necessary to effectuate the

purposes of Civil Rights Law § 50-a—to prevent the potential use of information in the records in litigation to degrade, embarrass, harass or impeach the integrity of the officer.” *Daily Gazette*, 93 N.Y.2d at 157-58; *see also id.* at 159 (stating that the “agency must demonstrate a substantial and realistic potential of the requested material for the abusive use against the officer . . .”). As the Supreme Court correctly concluded, under that standard, disclosure of the Complaints Summary is warranted. *Matter of Luongo*, 49 Misc. 3d at 716–17.

This case is analogous to *Burns*, where the Court of Appeals considered whether CRL 50-a permitted the withholding of “records containing statistical or factual tabulations of sick time taken” by a police officer during a specific month in 1983. *Burns*, 67 N.Y.2d at 565. Citing the legislature’s intent in enacting CRL 50-a (“to prevent time-consuming and perhaps vexatious investigation into irrelevant collateral matters in the context of a civil or criminal action”), FOIL’s presumption of access, and the principle that FOIL exemptions are to be construed narrowly, the Court of Appeals held that any potential use of the records in litigation was far too remote to prohibit disclosure. *Id.* at 569 (citations and internal quotation marks omitted).

Appellee here, as in *Burns*, seeks high-level statistical information regarding a police officer: namely, the number of substantiated complaints against Officer Pantaleo prior to the death of Mr. Garner, and the CCRB’s recommendations to the

NYPD (if any) based on those complaints. *See Matter of Luongo*, 49 Misc. 3d at 711 (noting the “limited nature of [Appellee’s] request”). Appellee does not seek information relating to the “alleged conduct, the other officers involved, the subject-matter (force, abusive conduct, discourtesy or offensive language) under which the complaints fall, [or] the evidence that was presented to the CCRB” (R. 84). Put simply, Appellee does not seek the type of comprehensive, detailed information that courts have previously found to be exempt from disclosure under CRL 50-a. *Cf. Prisoners’ Legal Servs.*, 73 N.Y.2d (upholding agency refusal to disclose the contents of all inmate grievances filed against a corrections officer pursuant to CRL 50-a); *Daily Gazette Co*, 93 N.Y.2d at 159 (upholding agency refusal to provide “comprehensive access to all records of the disciplinary action taken against . . . 18 police officers, including their identities and individual punishments, for possibly very serious misconduct” pursuant to CRL 50-a). Accordingly, even if the Complaints Summary were a “personnel record” within the meaning of CRL 50-a, disclosure is consistent with the objectives of CRL 50-a, and the mandates of FOIL. *Daily Gazette Co*, 93 N.Y.2d at 159.

II. THE TRIAL COURT PROPERLY REJECTED THE ARGUMENT THAT PUBLICATION OF AN ARTICLE QUOTING A CCRB INVESTIGATION DEMONSTRATES “A SUBSTANTIAL AND REALISTIC POTENTIAL OF THE REQUESTED MATERIAL FOR THE ABUSIVE USE.”

As members and representatives of the news media, *amici* are particularly troubled by the implications of Officer Pantaleo’s argument—asserted below and, again, on appeal—that the publication of an “internet article” on the website *silive.com* that quoted a CCRB investigation of an unsubstantiated complaint of alleged improper conduct made against him demonstrates that withholding the Complaints Summary is “reasonably necessary to effectuate the purposes of Civil Rights Law § 50-a—to prevent the potential use of information in the records in litigation to degrade, embarrass, harass or impeach the integrity of the officer.” *Daily Gazette*, 93 N.Y.2d at 157–58. Officer Pantaleo argues that publication of that article presumably led to a January 2015 incident in which a grand jury indicted a Michigan man for threatening Officer Pantaleo via Facebook. *Matter of Luongo*, 49 Misc. 3d at 712–13; *see also* Pantaleo Br. at 14–15. Officer Pantaleo’s attempt to convert news media coverage arising out of his role in the death of Eric Garner—what Officer Pantaleo refers to in his brief as a “so-called ‘matter of public concern,’” Pantaleo Br. at 14—into a basis for withholding the Complaints Summary is misguided at best, and should be rejected by this Court.

As an initial matter, CRL 50-a was enacted to prevent the “abusive use” of “personnel records” in “*litigation.*” *Daily Gazette*, 93 N.Y.2d at 157–59 (italics added). It was not designed to, nor could it be expected to, shield police officers from all harassing or threatening behavior outside the context of litigation. Moreover, while police officers involved in high-profile incidents may regrettably and unfortunately be the target of harassment or threats, such conduct cannot reasonably be attributed to media coverage of those incidents. As the trial court correctly found, there is simply no “connection between the July 2014 article’s reference to an unsubstantiated CCRB complaint, and a death threat made, without any reference to that complaint, six months later.” *Matter of Luongo*, 49 Misc. 3d at 719.

CRL 50-a was not intended to prevent or discourage the news media from gathering information to report on the conduct of police officers, matters which are of paramount concern to the public. The fact that Officer Pantaleo, by virtue of his role in the death of Eric Garner, has already been the subject of media attention, and the fact that information from the Complaints Summary may be reported by the news media, only underscores the strong interest of the press and the public in access to the data therein, along with other information concerning the death of Mr. Garner and Officer Pantaleo’s role in that incident. It is not a basis for withholding records pursuant to CRL 50-a.

III. A PROPERLY NARROW CONSTRUCTION OF CRL 50-A IS NECESSARY TO PRESERVE THE NEWS MEDIA’S ABILITY TO GATHER AND REPORT NEWS ABOUT LAW ENFORCEMENT.

The United States Supreme Court has repeatedly “emphasize[d] the special and constitutionally recognized role of . . . [the press] in informing and educating the public” *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 781 (1978); *see also Saxbe v. Washington Post Co.*, 417 U.S. 843, 863 (1974) (Powell, J., dissenting) (“[The Press] is the means by which the people receive that free flow of information and ideas essential to intelligent self-government.”). By providing the public with the information it needs to ensure the effective functioning of democracy, the press serves as an important and necessary check on governmental power. *See New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring) (“The press was protected so that it could bare the secrets of government and inform the people.”); *Herbert v. Lando*, 441 U.S. 153, 185 (1979) (writing that “the [First] Amendment shields those who would censure the state or expose its abuses” (citations omitted)).

Freedom of information laws like FOIL are one of the primary tools a journalist has. *See Lee Levine et al., Newsgathering and the Law*, § 11.01 (4th Ed. Matthew Bender & Company 2011) (“Perhaps because of the sheer volume of material over which the government exercises dominion, and no doubt because of the press’s fundamental role in reporting on governmental affairs, journalists look

to government-generated and collected information as their principal source of newsgathering”). Indeed, both the legislature and the Court of Appeals have recognized the news media’s vital role in gathering and distributing information to the public. FOIL § 84 (“the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article”); *see also Daily Gazette*, 93 N.Y.2d at 154 (writing that “news-gathering organizations . . . [play an] important role in fulfilling the public interest in open government”).

FOIL has served as an important tool for the news media when reporting on the NYPD, in particular—a government agency that, as the largest police force in the United States with more than 34,000 officers and a budget of greater than \$4 billion, affects the lives of New Yorkers every day. *See* Comm. On Open Gov’t, *Annual Report to the Governor and State Legislature* (December 2014) at 4, <https://perma.cc/3QMA-89FZ>. For example, in a 2014 story prompted by the death of Eric Garner, a reporter for *The Village Voice* submitted FOIL requests to gain access to information about a disciplinary trial of an NYPD officer that shed light on the use of chokeholds, and the role of the CCRB. *See* Jon Campbell, ‘*I was choked by the NYPD*’: *New York’s Chokehold Problem Isn’t Going Away*, *The Village Voice* (Sep. 23, 2014), <http://perma.cc/JZ53-7FYH>. Similarly, the *Daily News* obtained public records through FOIL that revealed that seven of the top ten

most-sued officers were assigned to a Staten Island narcotics unit that covers the same area where Eric Garner died. See Barry Paddock et al., *Staten Island, borough where Eric Garner died, has highest number of most-sued NYPD officers*, N.Y. Daily News (Jul. 28, 2014), <https://perma.cc/2NHX-BCPC>.

A vast number of pieces of important journalism about law enforcement and the criminal justice system in New York have been made possible by FOIL. From raising questions about the accuracy of criminal convictions,¹ to showing the inefficiency of a law that revokes a cab driver's license if the driver is deemed guilty of committing a traffic violation that causes the death or critical injury of someone else,² to revealing information about the NYPD's massive video surveillance network,³ to forcing the NYPD to release information about civilian shootings,⁴ to uncovering that New York City has spent \$428 million on police-related settlements from 2009 to 2014,⁵ to relaying the vast number of speed-

¹ Jeff Morganteen, *The NYPD's Secrecy Weapon*, The N.Y. World (Aug. 2, 2013), <http://perma.cc/R79B-BR3S>.

² Daniel Fitzsimmons, *The Flaws in Cooper's Law*, Our Town (Jun. 10, 2015), <https://perma.cc/5DK9-UEYT>.

³ Ali Winston, *Secrecy Shrouds NYPD's Anti-Terror Camera System*, CityLimits.org (Apr. 26, 2010), <http://perma.cc/SW5D-G4MK>.

⁴ Al Baker, *Judge Orders City to Release Reports on Shots Fired by Police at Civilians Since 1997*, N.Y. Times (Feb. 22, 2011), <https://perma.cc/972D-9DX2>.

⁵ Caroline Bankoff, *The City Has Paid Almost Half a Billion Dollars in NYPD-Related Settlements Over the Past 5 years*, N.Y. Magazine (Oct. 12, 2014), <http://perma.cc/B65G-G2NM>.

camera tickets issued in a given year,⁶ the list of what journalists have brought to light through the use of FOIL goes on⁷ and on.⁸ CRL 50-a itself has even been the subject of news coverage, with WNYC broadcasting a series on the lack of transparency created by law enforcement's too frequent reliance on that provision to withhold information from the public.⁹

Through the FOIL request at issue in this case, Appellees seek disclosure of information needed “to evaluate potential weaknesses in and recommend improvements concerning the City’s police investigation and disciplinary system.” (R. 28). Specifically, Appellees seek to learn “whether the systems of police oversight, accountability and discipline in New York City failed to prevent Mr. Garner’s death by failing to deter an officer with a history of excessive force.” *Id.* While Appellees are not journalists, the information they have requested concerning whether the largest police force in the United States lacked appropriate

⁶ Reuven Blau, *Speed Cameras Lead to Surge in Tickets and \$16.9M in Revenue for City*, Daily News (Mar. 30, 2015), <https://perma.cc/L5SH-QL3Q>.

⁷ Shawn Musgrave, *NYPD Social Media Policy Allows Catfishing—With the Proper Paperwork*, The Daily Beast (Feb. 5, 2015), <http://perma.cc/YVL6-PC7A>.

⁸ Patience Haggin, *Law School Study Alleges NYPD Overstepped its Power During Occupy Protests*, Time (Jul. 30, 2012), <http://perma.cc/9B3Z-Z93T>.

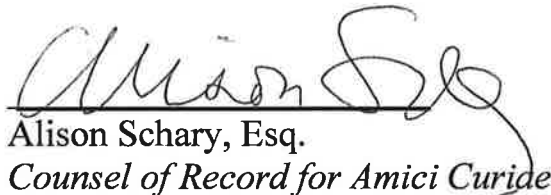
⁹ Robert Lewis, *When a Cop’s Right to Privacy Undermines Our Right to a Fair Trial*, WNYC (Oct. 14, 2015), <https://perma.cc/V2YM-MNN9>; Robert Lewis & Noah Veltman, *The Hard Truth About Cops Who Lie*, WNYC (Oct. 15, 2015), <https://perma.cc/EAH4-S7UC>; Robert Lewis et al., *New York Leads in Shielding Police Misconduct*, WNYC (Oct. 15, 2015), <https://perma.cc/JCT4-ET9Q>; Robert Lewis et al., *Is Police Misconduct a Secret in Your State?*, WNYC (Oct. 15, 2015), <https://perma.cc/G9UZ-EWGF>.

oversight of its officers is precisely the type of information the public requires “in order to make intelligent, informed choices with respect to both the direction and scope of governmental activities.” *Fink*, 47 N.Y.2d at 571 (citations omitted). It is precisely the type of information that FOIL was intended to make public.

CONCLUSION

For the reasons stated herein, *amici* respectfully urge the Court to affirm the decision of the Supreme Court requiring disclosure of the Complaints Summary under FOIL.

Respectfully submitted,



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APPENDIX A

Descriptions of *Amici*

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided assistance and research in First Amendment and Freedom of Information Act litigation since 1970.

Advance Publications, Inc., directly and through its subsidiaries, publishes more than 20 print and digital magazines with nationwide circulation, local news in print and online in 10 states, and leading business journals in over 40 cities throughout the United States. Through its subsidiaries, Advance also owns numerous digital video channels and internet sites and has interests in cable systems serving over 2.3 million subscribers.

The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 300 locations in more than 100 countries. On any given day, AP’s content can reach more than half of the world’s population.

BuzzFeed is a social news and entertainment company that provides shareable breaking news, original reporting, entertainment, and video across the social web to its global audience of more than 200 million.

Daily News, LP publishes the New York Daily News, a daily newspaper that serves primarily the New York City metropolitan area and is the ninth-largest paper in the country by circulation. The Daily News' website, NYDailyNews.com, receives approximately 26 million unique visitors each month.

Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with more than 1,800 journalists in nearly fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

The E.W. Scripps Company serves audiences and businesses through television, radio and digital media brands, with 33 television stations in 24 markets, including a station in Buffalo, New York. Scripps also owns 34 radio stations in eight markets, as well as local and national digital journalism and information businesses, including mobile video news service Newsy and weather

app developer WeatherSphere. Scripps owns and operates an award-winning investigative reporting newsroom in Washington, D.C. and serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

First Look Media Works, Inc. is a new non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting.

Gannett Co., Inc. is an international news and information company that publishes 108 daily newspapers in the United States and Guam, including USA TODAY. Each weekday, Gannett's newspapers are distributed to an audience of more than 8 million readers and the digital and mobile products associated with the company's publications serve online content to more than 100 million unique visitors each month.

Gawker Media LLC is the publisher of some of the web's best-loved brands and communities, including the eponymous Gawker, the gadget sensation Gizmodo, and the popular sports site Deadspin. Founded in 2002, Gawker's sites reach over 100 million readers around the world each month.

Hearst Corporation is one of the nation's largest diversified media and information companies. Its major interests include ownership of 15 daily and more than 30 weekly newspapers, including the Houston Chronicle, San Antonio

Express-News, San Francisco Chronicle and Albany Times Union; hundreds of magazines around the world, including Good Housekeeping, Cosmopolitan, ELLE and O, The Oprah Magazine; 31 television stations, which reach a combined 18 percent of U.S. viewers; ownership in leading cable networks, including Lifetime, A&E, HISTORY and ESPN; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; a majority stake in global ratings agency Fitch Group; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

MPA – The Association of Magazine Media, (“MPA”) is the largest industry association for magazine publishers. The MPA, established in 1919, represents over 175 domestic magazine media companies with more than 900 magazine titles. The MPA represents the interests of weekly, monthly and quarterly publications that produce titles on topics that cover politics, religion, sports, industry, and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

The National Press Club is the world’s leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

The New York Times Company is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com.

News 12 is a cable-exclusive news service available throughout the New York tri-state area.

The News Guild – CWA is a labor organization representing more than 30,000 employees of newspapers, newsmagazines, news services and related media enterprises. Guild representation comprises, in the main, the advertising, business, circulation, editorial, maintenance and related departments of these media outlets. The News Guild is a sector of the Communications Workers of America. CWA is America’s largest communications and media union, representing over 700,000 men and women in both private and public sectors.

Newsday LLC (“Newsday”) is the publisher of the daily newspaper, Newsday, and related news websites. Newsday is one of the nation’s largest daily newspapers, serving Long Island through its portfolio of print and digital products. Newsday has received 19 Pulitzer Prizes and other esteemed awards for outstanding journalism.

Online News Association (“ONA”) is the world’s largest association of online journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. ONA’s more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries.

RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

APPENDIX B

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