

No. 18-4158

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

CARLO M. CROCE,
Plaintiff-Appellant,

v.

THE NEW YORK TIMES COMPANY; JAMES GLANZ; AGUSTIN
ARMENDARIZ; ARTHUR OCHS SULZBERGER, JR.; DEAN BAQUET,
Defendants-Appellees.

Appeal from the from the United States District Court
for the Southern District of Ohio at Columbus

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
AND 41 MEDIA ORGANIZATIONS
IN SUPPORT OF APPELLEES SEEKING AFFIRMANCE**

Bruce D. Brown, Esq.
Counsel of Record
Katie Townsend, Esq.
Caitlin Vogus, Esq.
Lindsie Trego, Esq.
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, D.C. 20005
(202) 795-9300

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), the Reporters Committee for Freedom of the Press (the “Reporters Committee”), Advance Publications, Inc., American Society of News Editors, The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia, Boston Globe Media Partners, LLC, California News Publishers Association, Californians Aware, CBS News, Courthouse News Service, Dow Jones & Company, Inc., The E.W. Scripps Company, Gannett Co., Inc., International Documentary Assn., Knight Science Journalism Program, The McClatchy Company, The Media Institute, Media Law Resource Center, MIT Graduate Program in Science Writing, National Association of Science Writers, Inc., The National Press Club, National Press Club Journalism Institute, National Press Photographers Association, NBC News, New York Public Radio, News Media Alliance, Newsday LLC, Online News Association, POLITICO LLC, ProPublica, Quartz Media, Inc., Reporters Without Borders, Reveal from The Center for Investigative Reporting, Sinclair Broadcast Group, Inc., Society of Environmental Journalists, Society of Professional Journalists, STAT, Tribune Publishing Company, Tully Center for Free Speech, Undark Magazine, and VICE Media (collectively, “*amici*”) respectfully request leave to file the brief of *amici curiae* attached as Exhibit A to

this motion in support of Defendants-Appellees The New York Times Company, James Glanz, Agustin Armendariz, Arthur Ochs Sulzberger, Jr., and Dean Baquet.

Defendants-Appellees consent to the filing of the brief of *amici curiae*.

Plaintiff-Appellant has stated that he does not consent.

MOVANTS' INTEREST

The Reporters Committee is an unincorporated nonprofit association that was founded by leading journalists and media lawyers in 1970 to combat an unprecedented wave of government subpoenas seeking the names of confidential sources. Today, its attorneys provide *pro bono* legal representation and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. The Reporters Committee frequently serves as *amicus curiae* in cases that present legal issues of importance to journalists and news organizations in state and federal courts around the country, including in this Court. *See, e.g.*, Brief of *Amici Curiae* The Reporters Committee for Freedom of the Press and 33 Media Organizations, *Kent v. Hennelly*, No. 18-5821 (6th Cir. Dec. 5, 2018); Brief of *Amici Curiae* The Reporters Committee for Freedom of the Press and 36 Media Organizations, *In re: National Prescription Opiate Litigation*, Nos. 18-3839, 18-3860 (6th Cir. Nov. 13, 2018). Forty-one media organizations join the Reporters Committee as *amici* to urge the Court to affirm the district court's ruling in this

case. A supplemental statement of identity and interest of *amici* is included below as Appendix A.

As members and representatives of the news media, *amici* have a strong interest in ensuring that journalists and news organizations are able to report on live controversies without fear of defamation liability. The press must be able to cover issues of public concern, including scientific issues. Reporting about scientific controversies not only encourages valuable public discussion about the underlying scientific issues, but also strengthens public trust in science generally, by demonstrating that when scientists' conclusions are mistaken or inaccurate, the scientific process allows for those errors to be discovered and corrected.

The issues presented in this appeal—whether the district court erred in applying what it called its “balanced-report” approach, an implementation of the well-established defamatory meaning analysis, as well as the innocent construction rule—has potentially broad ramifications for *amici*, who depend upon such rules and privileges in jurisdictions across the United States when reporting on live controversies on matters of public concern.

REASONS FOR AND RELEVANCE OF THE BRIEF OF *AMICI CURIAE*

Amicus briefs “assist in cases of general public interest by supplementing the efforts of private counsel and by drawing the court’s attention to law that might otherwise escape consideration[.]” *Shoemaker v. City of Howell*, 795 F.3d 553,

562 (6th Cir. 2015) (quoting 3-28 Moore’s Manual—Federal Practice and Procedure § 28.84 (2014)). In this case, *amici* are uniquely positioned to provide “information on matters of law about which there [may be] doubt, especially in matters of public interest” like this one. *United States v. State of Mich.*, 940 F.2d 143, 164 (6th Cir. 1991).

The attached *amici* brief provides *amici*’s broader perspective regarding the role of journalists in reporting on ongoing scientific controversies in order to encourage public discourse about—and public understanding of—science and specific scientific disputes. As news media organizations, science-focused media entities, and nonprofit organizations that advocate on behalf of the news media, *amici* have a unique, combined expertise, described in the attached *amici* brief, as to the ways that media work to keep the public informed about scientific developments and controversies.

In addition, the attached *amici* brief also describes how courts across the nation have historically recognized the importance of reporting on allegations of wrongdoing and other controversies, establishing doctrines that protect journalists who report on such allegations from defamation liability. The effort to find the correct balance between reputational interests of individuals and the interest of the public in ensuring the press is free to bring to light newsworthy controversies has resulted in a mix of common law, statutory, and constitutional doctrines that vary

across jurisdictions. The attached *amici* brief demonstrates how Ohio’s “balanced-report” methodology—which, as part of the defamatory meaning analysis, asks whether a statement challenged as defamatory was published as part of a balanced report on a public controversy that includes opposing sides’ arguments and defenses—shares a common policy rationale with these other doctrines and fits into a wider body of law designed to properly strike that balance.

Finally, the attached *amici* brief also provides an analysis of the legal context of the innocent construction rule, which the district court applied as an alternative basis for its holding in this case and is recognized not only in Ohio, but in numerous other jurisdictions as well. In addition to exploring the application of the innocent construction rule in Ohio, the attached *amici* brief outlines cases in other jurisdictions, including Illinois and Missouri, where the innocent construction rule has been similarly applied to find that where a statement is capable of both a defamatory and non-defamatory meaning, the court should adopt the non-defamatory interpretation.

CONCLUSION

For the foregoing reasons, *amici* urge this Court to uphold the ruling of the district court.

Dated: March 11, 2019

Respectfully submitted,

/s/ Bruce D. Brown

Bruce D. Brown

Counsel of Record

Katie Townsend, Esq.

Caitlin Vogus, Esq.

Lindsie Trego, Esq.

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th Street NW, Suite 1020

Washington, DC 20005

bbrown@rcfp.org

(202) 795-9300

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 3,585 words, as determined by the word-count function of Microsoft Word, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f) and Sixth Circuit Rule 32(b).

2. This document complies with the type-face requirements and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

/s/ Bruce D. Brown

Bruce D. Brown, Esq.

Counsel of Record

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

Dated: March 11, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing Motion for Leave to File Brief of *Amici Curiae* electronically with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system on March 11, 2019.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Bruce D. Brown

Bruce D. Brown

Counsel of Record

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

APPENDIX A

STATEMENTS OF INTEREST

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

Advance Publications, Inc. is a diversified privately-held company that operates and invests in a broad range of media, communications and technology businesses. Its operating businesses include Conde Nast's global magazine and digital brand portfolio, including titles such as Wired, Vogue, Vanity Fair, The New Yorker, and GQ, local news media companies producing newspapers and digital properties in 10 different metro areas and states, and American City Business Journals, publisher of business journals in over 40 cities. In Ohio, Advance Publications, Inc. publishes The Plain Dealer and operates Advance Ohio, publisher of cleveland.com.

With some 500 members, **American Society of News Editors** ("ASNE") is an organization that includes directing editors of daily newspapers throughout the

Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

The Associated Press Media Editors is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom leaders; and champions the First Amendment and promotes freedom of information.

Association of Alternative Newsmedia ("AAN") is a not-for-profit trade association for approximately 110 alternative newspapers in North America. AAN

newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

Boston Globe Media Partners, LLC publishes The Boston Globe, the largest daily newspaper in New England.

The California News Publishers Association ("CNPA") is a nonprofit trade association representing the interests of over 1300 daily, weekly and student newspapers and news websites throughout California.

Californians Aware is a nonpartisan nonprofit corporation organized under the laws of California and eligible for tax exempt contributions as a 501(c)(3) charity pursuant to the Internal Revenue Code. Its mission is to foster the improvement of, compliance with and public understanding and use of, the California Public Records Act and other guarantees of the public's rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss.

CBS News produces round-the-clock news programming on the CBS Television Network, on CBSN and at cbsnews.com, as well as news and public affairs newsmagazine shows, such as "60 Minutes" and "48 Hours."

Courthouse News Service is a California-based legal news service for lawyers and the news media that focuses on court coverage throughout the nation,

reporting on matters raised in trial courts and courts of appeal up to and including the U.S. Supreme Court.

Dow Jones & Company, Inc., is a global provider of news and business information, delivering content to consumers and organizations around the world across multiple formats, including print, digital, mobile and live events. Dow Jones has produced unrivaled quality content for more than 130 years and today has one of the world's largest newsgathering operations globally. It produces leading publications and products including the flagship Wall Street Journal; Factiva; Barron's; MarketWatch; Financial News; Dow Jones Risk & Compliance; Dow Jones Newswires; and Dow Jones VentureSource.

The E.W. Scripps Company serves audiences and businesses through television, radio and digital media brands, with 33 television stations in 24 markets, including ABC affiliates in Cleveland and Cincinnati. Scripps also owns 33 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.

Gannett Co., Inc. is a leading news and information company which publishes USA TODAY and more than 100 local media properties. Each month more than 125 million unique visitors access content from USA TODAY and Gannett's local media organizations, putting the company squarely in the Top 10 U.S. news and information category.

The International Documentary Association (IDA) is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

Founded in 1983, the **Knight Science Journalism Program** seeks to nurture and enhance the ability of journalists from around the world to accurately illuminate the complex intersection of science, technology and human culture.

The McClatchy Company is a 21st century news and information leader, publisher of iconic brands such as the Miami Herald, The Kansas City Star, The Sacramento Bee, The Charlotte Observer, The (Raleigh) News and Observer, and the (Fort Worth) Star-Telegram. McClatchy operates media companies in 28 U.S. markets in 14 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, Calif., and listed on the New York Stock Exchange under the symbol MNI.

The Media Institute is a nonprofit research foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

The Media Law Resource Center, Inc. (“MLRC”) is a non-profit professional association for content providers in all media, and for their defense lawyers, providing a wide range of resources on media and content law, as well as policy issues. These include news and analysis of legal, legislative and regulatory developments; litigation resources and practice guides; and national and international media law conferences and meetings. The MLRC also works with its membership to respond to legislative and policy proposals, and speaks to the press and public on media law and First Amendment issues. It counts as members over 125 media companies, including newspaper, magazine and book publishers, TV and radio broadcasters, and digital platforms, and over 200 law firms working in the media law field. The MLRC was founded in 1980 by leading American publishers and broadcasters to assist in defending and protecting free press rights under the First Amendment.

The MIT Graduate Program in Science Writing is a one year master's degree program at the Massachusetts Institute of Technology that teaches the art

and discipline of science journalism. Students in the program are required to complete a professional internship, which frequently involves writing articles about scientific research and debates. The MIT Graduate Program in Science Writing maintains an online student publication, Scope, which showcases the work undertaken by the students in the program over the course of their year-long studies.

The National Association of Science Writers, chartered in 1955, is a membership organization dedicated to fostering the dissemination of accurate information regarding science and technology in keeping with the highest standards of journalism, and to promoting the professional interests of science writers.

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 Club Journalism Institute is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life, empowering engaged citizens to shape democracy. The Institute promotes and

defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

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 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.

NBC News produces the “Today” show, “NBC Nightly News with Lester Holt,” “Dateline NBC” and “Meet the Press.”

With an urban vibrancy and a global perspective, **New York Public Radio** produces innovative public radio programs, podcasts, and live events that touch a passionate community of 23.4 million people monthly on air, online and in person. From its state-of-the-art studios in New York City, NYPR is reshaping radio for a new generation of listeners with groundbreaking, award-winning programs including Radiolab, On the Media, The Takeaway, Nancy, and Carnegie Hall Live, among many others. New York Public Radio includes WNYC, WQXR, WNYC Studios, Gothamist, The Jerome L. Greene Performance Space, and New Jersey

Public Radio. Further information about programs, podcasts, and stations may be found at www.nypublicradio.org.

The News Media Alliance is a nonprofit organization representing the interests of online, mobile and print news publishers in the United States and Canada. Alliance members account for nearly 90% of the daily newspaper circulation in the United States, as well as a wide range of online, mobile and non-daily print publications. The Alliance focuses on the major issues that affect today's news publishing industry, including protecting the ability of a free and independent media to provide the public with news and information on matters of public concern.

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.

The Online News Association is the world's largest association of digital journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and

support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

POLITICO is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to more than 350 reporters, editors and producers. It distributes 30,000 copies of its Washington newspaper on each publishing day, publishes POLITICO Magazine, with a circulation of 33,000 six times a year, and maintains a U.S. website with an average of 26 million unique visitors per month.

ProPublica is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won four Pulitzer Prizes, most recently the 2017 Pulitzer gold medal for public service. ProPublica is supported primarily by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations selected for maximum impact. ProPublica's first regional operation, ProPublica Illinois, began publishing in late 2017, and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer Prize for Local Reporting.

Quartz, Inc., is a global news organization was founded in 2012 to serve a new kind of business leader with bracingly creative and intelligent journalism that's built for users first. We help our audience see around corners, navigate

disruption in their industries, build fulfilling careers, broaden their views of the world, and enjoy lives rich with culture.

Reporters Without Borders has been fighting censorship and supporting and protecting journalists since 1985. Activities are carried out on five continents through its network of over 150 correspondents, its national sections, and its close collaboration with local and regional press freedom groups. Reporters Without Borders currently has 10 offices and sections worldwide.

Reveal from The Center for Investigative Reporting, founded in 1977, is the nation's oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website <https://www.revealnews.org/>, the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country.

Sinclair is one of the largest and most diversified television broadcasting companies in the country. The Company owns, operates and/or provides services to 191 television stations in 89 markets. The Company is a leading local news provider in the country and has multiple national networks, live local sports production, as well as stations affiliated with all the major networks.

The Society of Environmental Journalists is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

STAT is an award-winning health-oriented news website launched in 2015. STAT delivers fast, deep, and tough-minded journalism about life sciences and the fast-moving business of making medicines. It casts a critical eye on scientific discoveries, scrutinizes corporate strategies, and examines controversies in the life science industry.

Tribune Publishing Company is one of the country’s leading media companies. The company’s daily newspapers include the Chicago Tribune, New York Daily News, The Baltimore Sun, Sun Sentinel (South Florida), Orlando Sentinel, Hartford Courant, The Morning Call, the Virginian Pilot and Daily Press. Popular news and information websites, including www.chicagotribune.com, complement Tribune Publishing’s publishing properties and extend the company’s nationwide audience.

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.

Undark Magazine is a prize-winning nonprofit and editorially independent digital magazine exploring the intersection of science and society. Its original, scrupulously fact-checked news features and investigations are published at undark.org, as well as in partnership with other news organizations.

VICE Media is the world's preeminent youth media company. It is a news, content and culture hub, and a leading producer of award-winning video, reaching young people on all screens across an unrivaled global network.

EXHIBIT A

No. 18-4158

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

CARLO M. CROCE,
Plaintiff-Appellant,

v.

THE NEW YORK TIMES COMPANY; JAMES GLANZ; AGUSTIN
ARMENDARIZ; ARTHUR OCHS SULZBERGER, JR.; DEAN BAQUET,
Defendants-Appellees.

Appeal from the from the United States District Court
for the Southern District of Ohio at Columbus

**BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS AND 41 MEDIA ORGANIZATIONS
IN SUPPORT OF APPELLEES SEEKING AFFIRMANCE**

Bruce D. Brown, Esq.
Counsel of Record
Katie Townsend, Esq.
Caitlin Vogus, Esq.
Lindsie Trego, Esq.
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, D.C. 20005
(202) 795-9300

Additional amici counsel listed in Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit

Case Number: 18-4158Case Name: Croce v. New York TimesName of counsel: Bruce D. Brown, Esq.Pursuant to 6th Cir. R. 26.1, 30 media organizations listed below**Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. BrownReporters Committee1156 15th St NW, Ste 1020 Wash, DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

*The Reporters Committee for Freedom of the Press
American Society of News Editors
The Associated Press
Associated Press Media Editors
Association of Alternative Newsmedia
Boston Globe Media Partners, LLC
California News Publishers Association
Californians Aware
Courthouse News Service
The E.W. Scripps Company
International Documentary Assn.
Knight Science Journalism Program
The Media Institute
Media Law Resource Center
MIT Graduate Program in Science Writing
National Association of Science Writers, Inc.
The National Press Club
National Press Club Journalism Institute
National Press Photographers Association
New York Public Radio
News Media Alliance
Online News Association
POLITICO LLC
ProPublica
Reporters Without Borders
Reveal from The Center for Investigative Reporting
Sinclair Broadcast Group, Inc.
Society of Environmental Journalists
Society of Professional Journalists
Tully Center for Free Speech
Undark Magazine

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit
Case Number: 18-4158 Case Name: Croce v. New York Times
Name of counsel: Bruce D. Brown, Esq.

Pursuant to 6th Cir. R. 26.1, Advance Publications, Inc.
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

See attached

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown
Reporters Committee
1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

SUBSIDIARIES AND AFFILIATES OF ADVANCE PUBLICATIONS, INC.

1010DATA FINANCIAL SERVICES LLC
1010DATA GLOBAL TELECOM SOLUTIONS LLC
1010DATA HOLDINGS CORP.
1010DATA INTERMEDIATE CORP.
1010DATA ONLINE DATA INSIGHTS LLC
1010DATA RETAIL SOLUTIONS LLC
1010DATA SERVICES LLC
1010DATA SOLUTIONS LLC
1010DATA, INC.
360VINSPIR, LLC
A/NAVPI LLC
A/NP HOLDINGS SUB LLC
A/NPC DATA HOLDINGS CORP.
A/NPC HOLDINGS LLC
A/NPC SBI HOLDINGS LLC
A/NPC SE HOLDINGS LLC
A/NPP HOLDINGS LLC
A/NPP HOLDINGS SUB LLC
ACBI (UK) LIMITED
ADVANCE BCI INC.
ADVANCE COMMUNICATIONS COMPANY LLC
ADVANCE EXECUTIVE PAYROLL II LLC
ADVANCE EXECUTIVE PAYROLL, LLC
ADVANCE FINANCE GROUP LLC
ADVANCE LOCAL HOLDINGS CORP.
ADVANCE LOCAL MEDIA LLC
ADVANCE MAGAZINE PUBLISHERS INC.
ADVANCE NEW JERSEY, LLC
ADVANCE PROGRAMMING HOLDINGS, LLC
ADVANCE PUBLICATIONS OF PERRY AND JUNIATA COUNTIES, INC.
ADVANCE PUBLICATIONS PRIVATE PAYROLL, LLC
ADVANCE PUBLICATIONS, INC.
ADVANCE VENTURE PARTNERS LLC
ADVANCE.NET LLC
ADVANCE/NEWHOUSE INVESTMENT PARTNERSHIP
ADVANCE/NEWHOUSE PARTNERSHIP
ADVANCE/NEWHOUSE PROGRAMMING PARTNERSHIP
ALBERT VERLINDE ENTERTAINMENT HOLDING B.V.

ALPHA SPRING LIMITED
AMERICAN CITY BUSINESS JOURNALS, INC.
AMPI JOURNAL PROPERTIES LLC
ANASTASIA MANAGER LIMITED LIABILITY COMPANY
ANASTASIA MUSICAL LIMITED LIABILITY COMPANY
ANASTASIA US TOURING LLC
APOLLO THEATER PRODUKTIONSGESELLSCHAFT MBH
AVP AIV 5 SAW LLC
AVP AIV 6 US LLC
AVP AIV I LLC
AVP AIV II LLC
AVP AIV III LLC
AVP PORTFOLIO I LLC
BEATRIXTHEATER B.V.
BEIJING CONDE INTERACTIVE CONSULTING CO., LTD.
BEIJING CONDE NAST DIGITAL CO., LTD.
BEIJING KANGLONGSHENG TECHNOLOGY CO., LTD.
BEIJING ZHUYI TECHNOLOGY CO., LTD.
BLOGPAYER, INC.
BLUEMAX THEATER PRODUKTIONSGESELLSCHAFT MBH
BOOH PRODUKTIONSGESELLSCHAFT MBH
BUSINESS PEOPLE PUBLICATIONS LIMITED
CIRCUSTHEATER I C.V.
CIRCUSTHEATER SCHEVENINGEN B.V.
CITIZENNET INC.
CITY BUSINESS JOURNALS NETWORK, INC.
CN COMMERCE LTD.
CNE PRODUCTIONS LLC
CNE STUDIOS LLC
CNI EDICIONES HOLDINGS INC.
COLOSSEUM THEATER PRODUKTIONSGESELLSCHAFT MBH
COMCORP, INC.
CONDE NAST & NATIONAL MAGAZINE DISTRIBUTORS LIMITED
CONDE NAST (CNI) LTD.
CONDE NAST (INDIA) PRIVATE LIMITED
CONDE NAST (SHANGHAI) FASHION AND DESIGN TRAINING CO., LTD.
CONDE NAST ADVERTISING (SHANGHAI) CO.,LTD.
CONDE NAST AMERICAS HOLDINGS, INC.
CONDE NAST AMERICAS L.C.
CONDE NAST ASIA/PACIFIC, INC.

CONDE NAST BRASIL HOLDING LTDA.
CONDE NAST CULTURAL ENTERPRISE CONSULTING (SHANGHAI) CO.,
LTD.
CONDE NAST DE COLOMBIA, S.A.
CONDE NAST DE MEXICO, S.A. DE C.V.
CONDE NAST DIGITAL GERMANY GMBH
CONDE NAST DIGITAL LIMITED
CONDE NAST ENTERTAINMENT LLC
CONDE NAST HOLDINGS (HK) LTD
CONDE NAST INTERNATIONAL INC.
CONDE NAST INTERNATIONAL LTD.
CONDE NAST JAPAN LLC
CONDE NAST JOHANSENS LIMITED
CONDE NAST JOINT STOCK COMPANY
CONDE NAST NEW MARKETS EUROPE/AFRICA, INC.
CONDE NAST PUBLICATIONS LIMITED
CONDE NAST RUSSIA LLC
CONDE NAST TAIWAN PUBLICATIONS LIMITED
CONDE NAST TREASURY SERVICES LTD.
CONDE NAST VERLAG GMBH
CONDENET IBERICA, S.L.
CONDENET.TW LIMITED
DADDY COOL PRODUCTIONS B.V.
DE NATIONALE MUSICALBON B.V.
DISCOVERY COMMUNICATIONS, INC.
EDICIONES CONDE NAST S.A.
EDICIONES CONELPA, S.L.
EDICIONES EL PAIS, S.L.
EDIZIONI CONDE NAST GMBH
EDIZIONI CONDE NAST S.P.A.
ESPORTS BUSINESS SOLUTIONS UG
EXECUTIVE SPORT LIMITED
FASHION NETWORKS INTERNATIONAL, LLC
FCT BEHEREND VENNOOT B.V.
FJG PRODUKTIONSGESELLSCHAFT MBH
FTI VENTURES LLC
G.K. CONDE NAST JAPAN
GLAMOUR MAGAZINE (PUBLISHERS) LTD.
GRUPO DE PUBLICACIONES IDEAS DE ARGENTINA, S.A.
INTERCULTURE COMMUNICATIONS INC.

INTERCULTURE MAGAZINE CO., LTD.
INTERCULTURE PUBLICIST CO. LTD.
IPG INTERNATIONAL LLC
JUNIATA COUNTIES, INC.
LA CUCINA ITALIANA S.R.L
LES PUBLICATIONS CONDE NAST S.A.
LIFESTYLE MEDIA JOINT STOCK COMPANY
LILY PRODUCTIONS SERVICES CORPORATION
LOWER BROADWAY PRODUCTIONS LLC
MAGAZINE HOLDINGS LIMITED
MAGAZINE SPECIAL PROJECTS LLC
MAMMAMIA PRODUKTIONSGESELLSCHAFT MBH
MATCHCRAFT B.V.
MATCHCRAFT LLC
MATCHCRAFT MEDIA, S.L.
MATCHCRAFT TECNOLOGIA EM MARKETING LTDA
MEDIA CONSORTIUM LLC
METRONOM THEATERPRODUKTIONSGESELLSCHAFT MBH
MISSISSIPPI PROPERTIES LLC
MONTROSE LLC
MONTROSE GMBH
MUSICAL BETRIEBSGESELLSCHAFT OPERETTENHAUS GMBH
MV DIGITAL GROUP LLC
NEUE FLORA GASTRONOMIEGESELLSCHAFT MBH
NEW JERSEY PRESS EQUIPMENT LLC
NEW WORLD STAGES LLC
NEWARK MORNING LEDGER CO.
NEWHOUSE BROADCASTING CORPORATION
NEWHOUSE CABLE HOLDINGS, LLC
NEWHOUSE PROGRAMMING HOLDINGS CORP.
NEWSPAPER SPECIAL PROJECTS LLC
NEWSPRINT PURCHASING, LLC
NEWZOO GROUP B.V.
NEWZOO INTERNATIONAL B.V.
NEWZOO LIMITED
NEWZOO LLC
NUNS ON TOUR LLC
PALLADIUM THEATER PRODUKTIONSGESELLSCHAFT MBH
PAYROLL, LLC
PHAROS PUBLICATIONS LIMITED

PITCHFORK FESTIVALS LLC
PLAIN DEALER PUBLISHING CO.
POP, INC.
PUBWORX SERVICES, LLC
REDDIT INC.
REMINDERS PUBLISHING LLC
ROCKSPRING TRANSEUROPEAN PROPERTIES VI (SPAIN)
LUXEMBOURG S.À.R.L.
ROCKY BROADWAY LIMITED PARTNERSHIP
ROCKY BROADWAY MANAGER LIMITED LIABILITY COMPANY
ROCKY DORIS CREATIVE LLC
SE CONCERTS GMBH I.L.
SE RUHRGEBIET THEATER GMBH
SHANGHAI CONDE NAST ADVERTISING CO., LTD.
SISTER ACT BROADWAY LP
SISTER ACT LICENSING B.V.
SISTER ACT ON TOUR LLC
SPECIAL PROJECT SERVICES, LLC
SPIELBUDENPLATZ BETREIBERGESELLSCHAFT MBH
ST. LOUIS BUSINESS JOURNAL CORP.
STAGE ENTERTAINMENT B.V.
STAGE ENTERTAINMENT ESPANA S.L.
STAGE ENTERTAINMENT FRANCE SAS
STAGE ENTERTAINMENT GERMANY HOLDING GMBH
STAGE ENTERTAINMENT GMBH
STAGE ENTERTAINMENT HAMBURG B.V.
STAGE ENTERTAINMENT LLC
STAGE ENTERTAINMENT MARKETING & SALES GMBH
STAGE ENTERTAINMENT NEDERLAND B.V.
STAGE ENTERTAINMENT NEDERLAND PRODUCTIES B.V.
STAGE ENTERTAINMENT OPERETTENHAUS B.V.
STAGE ENTERTAINMENT PRODUCTIONS B.V.
STAGE ENTERTAINMENT PRODUKTIONSGESELLSCHAFT MBH
STAGE ENTERTAINMENT RUSLAND B.V.
STAGE ENTERTAINMENT SISTER ACT BROADWAY LLC (GP)
STAGE ENTERTAINMENT SRL.
STAGE ENTERTAINMENT STUDIOS GMBH
STAGE ENTERTAINMENT THEATER SERVICES GMBH
STAGE ENTERTAINMENT THEATERARRANGEMENTEN B.V.
STAGE ENTERTAINMENT TOURING PRODUCTIONS B.V.

STAGE ENTERTAINMENT TOURING PRODUCTIONS ICE AGE B.V.
STAGE ENTERTAINMENT UK LTD.
STAGE ENTERTAINMENT USA, INC.
STAGE ESTATE FRANCE SAS
STAGE LEASE CO. INC.
STAGE THEATER BEHEER B.V.
TAGHKANIC REFRESHMENT, INC.
TATLER PUBLISHING COMPANY LIMITED
TDV PRODUKTIONSGESELLSCHAFT MBH
TDW PRODUKTIONSGESELLSCHAFT MBH
TELEVOGUE LIMITED
THE CONDE NAST PUBLICATIONS LIMITED
THE EVENING JOURNAL ASSOCIATION
THE HILLSBORO ARGUS INC.
THE PATRIOT NEWS CO.
THE REPUBLICAN COMPANY
THEATER AM POTSDAMER PLATZ PRODUKTIONSGESELLSCHAFT
MBH I.L.
THEATER AN DER ELBE PRODUKTIONSGESELLSCHAFT MBH
THEATER DES WESTENS BETRIEBSGESELLSCHAFT MBH
THEATER IM HAFEN GRUNDSTÜCKSGESELLSCHAFT MBH
THEATER IM HAFEN PRODUKTIONSGESELLSCHAFT MBH
THEATER NEUE FLORA PRODUKTIONSGESELLSCHAFT MBH
TINA TURNER MUSICAL LTD
TOUR ENTERTAINMENT GMBH
TWO COASTS PRODUCTIONS LLC
VIDEO VOGUE LIMITED
VINCENT DE MUSICAL B.V.
VOGUE DESIGN LIMITED
VOGUE MODEL AGENCY LIMITED
VOGUE STUDIO LIMITED
WINE & FOOD PUBLICATIONS LTD.
WOODTHORN ECONOMIC CONSULTANTS LLC
X F MUSICAL LTD
X F MUSICAL WEST END LTD.
ZIPLIST, INC.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit

Case Number: 18-4158Case Name: Croce v. New York TimesName of counsel: Bruce D. Brown, Esq.Pursuant to 6th Cir. R. 26.1, CBS News*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

CBS News is a division of CBS Broadcasting Inc., an indirect wholly owned subsidiary of CBS Corporation. CBS Corporation is a publicly traded company. National Amusements, Inc., a privately held company, beneficially owns the majority of the Class A voting stock of CBS Corporation. CBS Corporation is not aware of any other ownership of the Class A voting stock of CBS Corporation in the amount of 10% or more.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

NO

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown

Reporters Committee

1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit

Case Number: 18-4158Case Name: Croce v. New York TimesName of counsel: Bruce D. Brown, Esq.Pursuant to 6th Cir. R. 26.1, Dow Jones*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

News Corporation, a publicly held company, is the indirect parent corporation of Dow Jones. Ruby Newco, LLC, a subsidiary of News Corporation and a non-publicly held company, is the direct parent of Dow Jones. No publicly held company directly owns 10% or more of the stock of Dow Jones

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

NO

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown

Reporters Committee

1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit

Case Number: 18-4158Case Name: Croce v. New York TimesName of counsel: Bruce D. Brown, Esq.Pursuant to 6th Cir. R. 26.1, Gannett Co.*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

BlackRock, Inc., a publicly traded company, owns 10 percent or more of Gannett's stock.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

NO

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown

Reporters Committee

1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**Sixth Circuit
Case Number: 18-4158 Case Name: Croce v. New York TimesName of counsel: Bruce D. Brown, Esq.Pursuant to 6th Cir. R. 26.1, The McClatchy Company
Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

The McClatchy Company is publicly traded on the New York Stock Exchange American under the ticker symbol MNI. Chatham Asset Management, LLC and Royce & Associates, LP both own 10% or more of the common stock of The McClatchy Company.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

NO

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown
Reporters Committee
1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit

Case Number: 18-4158Case Name: Croce v. New York TimesName of counsel: Bruce D. Brown, Esq.Pursuant to 6th Cir. R. 26.1, NBC News*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

NBC News is a division of NBCUniversal Media, LLC. Comcast Corporation and its consolidated subsidiaries own 100% of the common equity interests of NBCUniversal Media, LLC.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

NO

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown

Reporters Committee

1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit

Case Number: 18-4158Case Name: Croce v. New York TimesName of counsel: Bruce D. Brown, Esq.Pursuant to 6th Cir. R. 26.1, Newsday LLC*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

Newsday LLC is a Delaware limited liability company whose members are Tillandsia Media Holdings LLC and Newsday Holdings LLC. Newsday Holdings LLC is an indirect subsidiary of Cablevision Systems Corporation. Cablevision Systems Corporation is (a) directly owned by Altice USA, Inc., a Delaware corporation which is publicly traded on the New York Stock Exchange and (b) indirectly owned by Altice N.V., a Netherlands public company.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

NO

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown

Reporters Committee

1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit

Case Number: 18-4158Case Name: Croce v. New York TimesName of counsel: Bruce D. Brown, Esq.Pursuant to 6th Cir. R. 26.1, Quartz Media, Inc.*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

Quartz Media, Inc. is a subsidiary of Uzabase USA, Inc., a subsidiary of Uzabase, Inc., a public company traded on the Tokyo Exchange.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

NO

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown

Reporters Committee

1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit

Case Number: 18-4158Case Name: Croce v. New York TimesName of counsel: Bruce D. Brown, Esq.Pursuant to 6th Cir. R. 26.1, STAT*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

STAT is published by Boston Globe Life Sciences Media, LLC, a wholly owned subsidiary of Boston Globe Media Partners, LLC.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown

Reporters Committee

1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit

Case Number: 18-4158Case Name: Croce v. New York TimesName of counsel: Bruce D. Brown, Esq.Pursuant to 6th Cir. R. 26.1, Tribune Publishing Company*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

Tribune Publishing Company is a publicly held corporation. Merrick Media, LLC, Merrick Venture Management, LLC and Michael W. Ferro, Jr., together own over 10% of Tribune Publishing Company's common stock. Nant Capital LLC, Dr. Patrick Soon-Shiong and California Capital Equity, LLC together own over 10% of Tribune Publishing Company's stock.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

NO

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown

Reporters Committee

1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit
Case Number: 18-4158 Case Name: Croce v. New York Times
Name of counsel: Bruce D. Brown, Esq.

Pursuant to 6th Cir. R. 26.1, VICE Media LLC
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

VICE Media LLC is a wholly-owned subsidiary of Vice Holding Inc., which is a wholly-owned subsidiary of Vice Group Holding Inc. The Walt Disney Company is the only publicly held corporation that owns 10% or more of Vice Group Holding Inc.'s stock.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

NO

CERTIFICATE OF SERVICE

I certify that on March 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Bruce D. Brown
Reporters Committee
1156 15th St NW, Ste 1020 Wash., DC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF IDENTITY AND INTEREST OF <i>AMICI CURIAE</i>	1
SOURCE OF AUTHORITY TO FILE	2
FED. R. APP. P. 29(a)(4)(E) STATEMENT	3
SUMMARY OF ARGUMENT.....	4
ARGUMENT	6
I. Journalists must be able to report on live scientific controversies without fear of defamation liability.....	6
II. The district court’s defamatory meaning analysis protects the press’s ability to report on newsworthy allegations.	11
A. The Ohio Supreme Court has adopted the “balanced-report” analysis to protect reporting about allegations of wrongdoing.....	12
B. Other jurisdictions have applied the substantial truth doctrine in a similar manner to protect reports of third-party allegations.	14
C. Still more jurisdictions have applied privileges, such as the neutral reportage privilege or the fair report privilege, to protect reporting of third-party allegations.	19
III. Multiple Ohio appellate courts, as well as courts from other jurisdictions, have applied the innocent construction rule, making it likely that the Ohio Supreme Court would continue to do so.....	21
CONCLUSION	25
CERTIFICATE OF COMPLIANCE	26
CERTIFICATE OF SERVICE.....	27
APPENDIX A	A-1

TABLE OF AUTHORITIES

Cases

<i>American Chemical Society v. Leadscope</i> , 133 Ohio St. 3d 366 (2012).....	12, 13, 14
<i>Arthur v. Offit</i> , Civil Action No. 01:09-cv-1398, 2010 WL 883745 (E.D. Va. Mar. 10, 2010)	12
<i>Basilus v. Honolulu Pub’g Co.</i> , 711 F. Supp. 548 (D. Haw. 1989)	16
<i>Cavalier v. Original Club Forest</i> , 59 So. 2d 489 (La. Ct. App. 1952)	11
<i>Chapski v. Copley Press, Inc.</i> , 92 Ill. 2d 344 (1982).....	22, 23
<i>Early v. Toledo Blade</i> , 130 Ohio App. 3d 302 (6th Dist. 1998).....	22
<i>Edwards v. Nat’l Audubon Soc’y, Inc.</i> , 556 F.2d 113 (2d Cir. 1977)	19
<i>Ferrari v. Plain Dealer Publ’g Co.</i> , 142 Ohio App. 3d 629 (8th Dist. 2001).....	22
<i>Global Relief Found. v. N.Y. Times</i> , 390 F.3d 973 (7th Cir. 2004).....	14, 15
<i>Hodge v. WCPO Television News</i> , No. 97-CI-02516, 2001 WL 1811681 (Ky. Cir. Ct. 2001)	18
<i>Holley v. WBNS 10TV, Inc.</i> , 149 Ohio App. 3d 22 (10th Dist. 2002)	22
<i>Janklow v. Newsweek, Inc.</i> , 759 F.2d 644 (8th Cir. 1985)	16
<i>Jankovic v. Int’l Crisis Group</i> , 593 F.3d 22 (D.C. Cir. 2010).....	20
<i>Jewell v. NYP Holdings, Inc.</i> , 23 F. Supp. 2d 348 (S.D.N.Y 1998).....	16
<i>Leal v. Holtvogt</i> , 123 Ohio App. 3d 51 (2nd Dist. 1998).....	22
<i>Mangelluzzi v. Morley</i> , 40 N.E.3d 588 (8th Dist. 2015)	22
<i>Mendise v. Plain dealer Publ’g Co.</i> , 69 Ohio App. 3d 721 (8th Dist. 1990).....	22
<i>Mittelman v. Witous</i> , 135 Ill. 2d 220 (1989)	23

<i>Neely v. Wilson</i> , 418 S.W.3d 52 (Tex. 2013)	17
<i>Phillips v. Evening Star Newspaper Co.</i> , 424 A.2d 78 (D.C. 1980)	20
<i>Read v. News-Journal Co.</i> , 474 A.2d 119 (Del. 1984).....	20
<i>Roth v. United States</i> , 354 U.S. 476 (1957)	6
<i>Sethi v. WFMJ Television, Inc.</i> , 134 Ohio App.3d 796 (7th Dist. 1999)	22
<i>Thompson v. Emmis Television Broad.</i> , 894 So.2d 480 (La. Ct. App. 2005) ...	17, 18
<i>Walker v. Kan. City Star Co.</i> , 406 S.W.2d 44 (Mo. 1966).....	23
<i>Yeager v. Local Union 20</i> , 6 Ohio St.3d 369 (1983).....	21, 22
<i>Yeager v. Local Union 20, Teamsters, Chauffeurs, Warehousemen & Helpers of Am.</i> , No. L-82-020, 1982 WL 6541 (Ohio Ct. App. 1982).....	21
<i>Yohe v. Nugent</i> , 321 F.3d 35 (1st Cir. 2003).....	19
<i>Young v. Morning Journal</i> , 76 Ohio St.3d 627 (1996).....	20

Statutes

Ohio R.C. §§ 2317.04–.05.....	19
-------------------------------	----

Other Authorities

David Z. Morris, ‘Power Poses’ Researcher Dana Carney Now Says Effects are “Undeniably” False, <i>Fortune</i> (Oct. 2, 2016), https://perma.cc/4J8D-SD9X	9
Emma Hinchliffe & Devin Hance, <i>Powerful Women’s Secret to the Power Pose? ‘Just Take Up Space’</i> , <i>Fortune</i> (March 8, 2019), https://perma.cc/4QNT-S5UM .9	
Janny Scott, <i>Postmodern Gravity Deconstructed</i> , <i>Slyly</i> , N.Y. Times (May 18, 1996), https://perma.cc/6YJ3-BL4S ; see also John Bohannon, <i>Who’s Afraid of Peer Review?</i> , <i>Science</i> (Oct. 4, 2013), https://perma.cc/9PBJ-N9NJ	10
Jennifer Couzin-Frankel, <i>Following charges of flawed statistics, major medical journal sets record straight</i> , <i>Science</i> (June 13, 2018), https://perma.cc/H9JY-DX88	8

John Feldman, <i>The Benefits and Shortcomings Of Blind Hiring In the Recruitment Process</i> (April 3, 2018), https://perma.cc/LA3K-Q9YB	7
Kelly Servick, <i>HIV drug could improve recovery after stroke</i> , Science Magazine (Feb. 21, 2019), https://perma.cc/HG8B-SJPB	7
Kim Elsesser, <i>Power Posing is Back: Amy Cuddy Successfully Refutes Criticism</i> , Forbes (Apr. 3, 2018), https://perma.cc/2K47-4DYD	9
Lenny Bernstein, <i>Fish-oil drugs protect heart health, two studies say</i> , Wash. Post (Nov. 10, 2018), https://perma.cc/HL5B-KZFN	7
Meiring De Villiers, <i>Substantial Truth in Defamation Law</i> , 32 Am. J. Trial Advoc. 91, 99–100 (2008)	14
Stephen Buranyi & Hannah Devlin, <i>Dozens of recent clinical trials may contain wrong or falsified data, claims study</i> , Guardian (June 5, 2017), https://perma.cc/5HHL-TTAB	7, 8
<i>What the ‘Grievance Studies’ Hoax Means</i> , Chronicle of Higher Education (Oct. 9, 2018), https://bit.ly/2A7VmJy	10

Treatises

50 Am. Jur. 2d <i>Libel and Slander</i> § 298	23
Restatement (Second) of Torts § 586 (1977)	23
Susan Grogan Faller, et al., <i>Survey of Ohio Libel Law, in Media Libel Law 2017-2018 50-State Survey 1295, 1299</i> (Media L. Resource Center ed., 2017)	25

STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are the Reporters Committee for Freedom of the Press, Advance Publications, Inc., American Society of News Editors, The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia, Boston Globe Media Partners, LLC, California News Publishers Association, Californians Aware, CBS News, Courthouse News Service, Dow Jones & Company, Inc., The E.W. Scripps Company, Gannett Co., Inc., International Documentary Assn., Knight Science Journalism Program, The McClatchy Company, The Media Institute, Media Law Resource Center, MIT Graduate Program in Science Writing, National Association of Science Writers, Inc., The National Press Club, National Press Club Journalism Institute, National Press Photographers Association, NBC News, New York Public Radio, News Media Alliance, Newsday LLC, Online News Association, POLITICO LLC, ProPublica, Quartz Media, Inc., Reporters Without Borders, Reveal from The Center for Investigative Reporting, Sinclair Broadcast Group, Inc., Society of Environmental Journalists, Society of Professional Journalists, STAT, Tribune Publishing Company, Tully Center for Free Speech, Undark Magazine, and VICE Media (collectively, “*amici*”). *Amici* are news media organizations, science-focused media entities, and nonprofit organizations that advocate on behalf of the news

media. A supplemental statement of identity and interest of *amici* is included as Appendix A to the Motion for Leave to File this brief of *amici curiae*.

Amici file this brief in support of Defendants-Appellees The New York Times, James Glanz, Agustin Armendariz, Arthur Ochs Sulzberger, Jr., and Dean Baquet (collectively, “The Times”). As members and representatives of the news media, *amici* have a strong interest in protecting the press’s ability, consistent with the First Amendment, to report on ongoing public controversies without fear of liability for defamation. Specifically, *amici* have an interest in ensuring that courts apply the correct legal protections when balanced reports of the positions of both sides to a dispute are challenged as defamatory as a matter of law.

SOURCE OF AUTHORITY TO FILE

Amici have moved for leave to file this brief in the accompanying motion pursuant to Federal Rule of Appellate Procedure 29(a)(3).

FED. R. APP. P. 29(a)(4)(E) STATEMENT

Amici state that:

1. no party's counsel authored the brief in whole or in part;
2. no party or party's counsel contributed money intended to fund preparing or submitting the brief; and
3. no person, other than *amici*, their members or their counsel, contributed money intended to fund preparing or submitting the brief.

SUMMARY OF ARGUMENT

Journalists play a vital role in our society by keeping the public informed. News organizations regularly report on live controversies of public interest and concern, shedding light on allegations, defenses, and the ongoing findings of both official and private investigations. Such reporting is common in all forms of journalism, including science journalism, where news stories about scientific controversies not only encourage public discourse about scientific issues, but also strengthen public trust in science, generally, by demonstrating that when the conclusions of scientists are mistaken, the scientific process allows for their errors to be discovered and corrected.

Courts around the country have long recognized that, under the First Amendment, journalists must be afforded the right to report on live controversies without fear of defamation liability. Different courts have taken different approaches when it comes to striking the right balance between protecting the reputations of individuals involved in newsworthy controversies and protecting the right of the public to be informed about such controversies. While some jurisdictions have adopted privileges such as the neutral reportage privilege or the fair comment privilege, others apply the substantial truth doctrine, finding that the reporting of allegations is substantially true when it accurately describes the allegations and defenses in a live controversy. In Ohio, the determination of

whether a reasonable reader would construe a challenged statement as defamatory is made using what the district court called its “balanced-report” approach, *i.e.*, an application of the well-established defamatory meaning analysis that examines whether the challenged statement was published as part of a balanced report on a public controversy that includes the arguments and defenses of the opposing sides. Each of these doctrines—known by different names and providing varying degrees of protection—protects the ability of journalists to report on live controversies and serves the underlying goals of the First Amendment by fostering informed public discussion. As the district court correctly concluded, because the article at issue and the individual allegedly defamatory statements present a balanced report of the positions and arguments of both sides of the controversy regarding Appellant, they are not defamatory as a matter of law.

In addition, the district court’s holding in the alternative that the article as a whole and Statement 10 are not defamatory as a matter of law under the innocent construction rule should be affirmed. Ohio is one of a number of jurisdictions that have adopted the innocent construction rule, which holds that where a statement is susceptible to both an innocent interpretation and a defamatory one, the court should adopt the innocent interpretation. That many Ohio courts and courts of other jurisdictions, such as Illinois and Missouri, have applied this doctrine indicates that the Ohio Supreme Court would apply the rule in this case.

For these reasons, *amici* urge this Court to affirm the district court's judgment dismissing Appellant's claims.¹

ARGUMENT

I. Journalists must be able to report on live scientific controversies without fear of defamation liability.

Courts have long recognized that it is the responsibility of the news media to inform the public on issues and events of community concern. *See Roth v. United States*, 354 U.S. 476, 484 (1957) (“The protection given speech and press was fashioned to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.”). If journalists are to fulfill this function, they must be able to fairly and accurately report on accusations of wrongdoing, dishonesty, or professional incompetence that implicate matter of public interest without being exposed to defamation liability.

Scientific reporting often concerns matters of public concern, from news stories about research that affects medical treatments to socio-behavioral research that influences hiring practices at large companies. *See, e.g., Kelly Servick, HIV*

¹ *Amici* agree with The Times that the district court also correctly ruled in the alternative that Statement 14 is substantially true, that objective reports of third-party statements are not actionable, and that the district court correctly dismissed Appellant's claims for false light and intentional infliction of emotional distress. *See Br. for Defs.-Appellants* 45–52. Because these issues have been fully briefed by The Times, *amici* do not address them.

drug could improve recovery after stroke, Science Magazine (Feb. 21, 2019), <https://perma.cc/HG8B-SJPB>; Lenny Bernstein, *Fish-oil drugs protect heart health, two studies say*, Wash. Post (Nov. 10, 2018), <https://perma.cc/HL5B-KZFN>; John Feldman, *The Benefits and Shortcomings Of Blind Hiring In the Recruitment Process* (April 3, 2018), <https://perma.cc/LA3K-Q9YB>. The role of science reporters is especially important because the public is unlikely to understand technical scientific studies or debates within the scientific community without aid. Science reporters connect the public with the scientific community and make scientific discoveries and issues comprehensible to laymen.

Science reporters regularly report on live controversies within the scientific community, such as allegations of data manipulation and misuse of government funding. These stories keep the public informed about issues of public interest, including the reliability of studies upon which important policy decisions are based, and the use of taxpayer dollars to support certain scientific endeavors. News reports on scientific controversies can reveal not only scientific errors or fraud, but also how the scientific community works to correct such errors by investigating, debating, retracting, and revising.

For example, in June 2017, *The Guardian* reported on allegations that many recent clinical trials published in leading medical journals contained data that was likely incorrect or falsified. Stephen Buranyi & Hannah Devlin, *Dozens of recent*

clinical trials may contain wrong or falsified data, claims study, Guardian (June 5, 2017), <https://perma.cc/5HHL-TTAB>. The report was based upon an article by scientist John Carlisle published in the journal *Anaesthesia*, which found that 90 of the more than 5,000 studies he examined contained suspicious data. *Id.* A year later, six of those studies—including an influential study that had claimed the Mediterranean diet could prevent heart disease—were either corrected or retracted by *The New England Journal of Medicine*. Jennifer Couzin-Frankel, *Following charges of flawed statistics, major medical journal sets record straight*, Science (June 13, 2018), <https://perma.cc/H9JY-DX88>.

Science reporting not only helps the public understand potential errors in science, but also encourages scientists implicated by allegations of error to double check and correct their work. For example, in light of the reports about the Mediterranean diet study's flaws discussed above, the authors reanalyzed their data and later republished the study in *The New England Journal of Medicine*, though with less statistical significance. *Id.* In addition to leading to the correction of this study, the stories about its original inaccuracies may have promoted trust in the republished study because it had been given a hard look by the news media, Carlisle, *The New England Journal of Medicine*, and its authors. Public discussion, including news reports, about scientific controversies is not a malicious attempt to discredit scientists, but rather an integral part of the scientific method,

whereby scientific conclusions are published, questioned, and replicated, and ultimately strengthened or modified.

Even when allegations against scientists are subject to ongoing disputes, reporting on the ongoing controversy is important to public understanding. For example, in 2012, social psychologist Amy Cuddy's TED talk discussing her research on "power poses"—which showed that standing in certain poses heightened testosterone and lowered cortisol, making people more confident—became a social media sensation. In 2016, *Fortune* published a story outlining allegations by Cuddy's co-researcher Dana Carney that the power pose study was flawed, had been the result of "cherry-picking data," and that replications of the study had failed to produce the same findings. David Z. Morris, '*Power Poses*' Researcher Dana Carney Now Says Effects are "Undeniably" False, *Fortune* (Oct. 2, 2016), <https://perma.cc/4J8D-SD9X>. However, two years after that report, *Forbes* published a follow-up story discussing further studies by Cuddy that claimed to show more conclusively that power posing does make individuals feel more powerful. Kim Elsesser, *Power Posing is Back: Amy Cuddy Successfully Refutes Criticism*, *Forbes* (Apr. 3, 2018), <https://perma.cc/2K47-4DYD>. Cuddy's research on power posing continues to be the subject of scientific debate. See Emma Hinchliffe & Devin Hance, *Powerful Women's Secret to the Power Pose? 'Just Take Up Space'*, *Fortune* (March 8, 2019), <https://perma.cc/4QNT-S5UM>.

Although the allegations in the 2016 *Fortune* article continue to be the subject of discussion and disagreement within the scientific community, the reporting by *Fortune* and *Forbes* allows the public to follow and take part in a live scientific debate about the veracity of Cuddy's findings and her research methods. In other words, it permits the public to participate in the scientific process by seeing scientists debate the data in the public sphere.

This type of reporting is especially important as the scientific community struggles to ensure published studies are wholly truthful. Just last year, three hoaxers wrote 20 fictitious research papers and submitted them to peer-reviewed journals, managing to have seven of them published. *What the 'Grievance Studies' Hoax Means*, Chronicle of Higher Education (Oct. 9, 2018), <https://bit.ly/2A7VmJy>. This was not the first time a scientific journal had published a fake article; for example, physicist Alan Sokal had a hoax paper published by peer-reviewed journal *Social Text* in 1996. Janny Scott, *Postmodern Gravity Deconstructed*, *Slyly*, N.Y. Times (May 18, 1996), <https://perma.cc/6YJ3-BL4S>; see also John Bohannon, *Who's Afraid of Peer Review?*, *Science* (Oct. 4, 2013), <https://perma.cc/9PBJ-N9NJ> (discussing hoax articles being published in open-access journals, which are not peer reviewed). News reports about publications of allegedly fake articles expose not only the hoax, but also raise

important questions about the overall process for acceptance and publication of scientific studies in peer-reviewed journals.

II. The district court’s defamatory meaning analysis protects the press’s ability to report on newsworthy allegations.

In recognition of the importance of reporting on allegations of wrongdoing and other controversies, many jurisdictions, including Ohio, have established doctrines that protect journalists who report on such allegations from defamation liability. The effort to find the correct balance between reputational interests of individuals and the interest of the public in ensuring the press is free to bring to light newsworthy controversies has resulted in a mix of common law, statutory, and constitutional doctrines that vary across jurisdictions. However, all of these rules—to different degrees and using different formulations—limit the harshness of blanket republication liability premised on the notion that “talebearers are as bad as talemakers.” *See Cavalier v. Original Club Forest*, 59 So. 2d 489, 490 (La. Ct. App. 1952). As the district court recognized, in Ohio, whether a challenged statement is defamatory requires a court to review the totality of the circumstances, including whether it was published as part of a balanced report on a public controversy that includes opposing parties’ arguments and defenses. *See Opinion & Order*, Dkt. No. 54, PageID # 1042.

Courts across the country have recognized that the news media must have the freedom to report on live controversies without facing defamation liability

because the public must have the opportunity to learn of such newsworthy controversies. This is especially true in science reporting, which often discusses hotly contested issues and differing theories or research results. *See* Section I, *supra*; *see also Arthur v. Offit*, Civil Action No. 01:09-cv-1398, 2010 WL 883745, at *6 (E.D. Va. Mar. 10, 2010) (noting that “[c]ourts have a justifiable reticence about venturing into the thicket of scientific debate, especially in the defamation context”). Thus, Ohio joins a number of jurisdictions that, under various names and with differing scopes of coverage—often couched under the “substantial truth” test—recognize doctrines that enable the press to report on newsworthy controversies for the benefit of the public.

- A. The Ohio Supreme Court has adopted the “balanced-report” analysis to protect reporting about allegations of wrongdoing.

The Ohio Supreme Court’s defamatory meaning inquiry in *American Chemical Society v. Leadscope*, 133 Ohio St. 3d 366 (2012) (“ACS”), applied by the district court in this case as a “balanced-report” analysis, falls within a tradition—followed by many jurisdictions—of protecting journalism on live controversies. In *ACS*, the Ohio Supreme Court determined that statements contained in a newspaper article were not defamatory because the article presented a balanced view of allegations and defenses from both sides of a live controversy. *Id.* at 390.

It is true, as Appellant points out, Br. of Appellant 25 (filed Feb. 1, 2019), ECF No. 24, that the newspaper was not party to the suit in *ACS*. *See id.* at 367. However, this does not negate the application of the court’s reasoning in *ACS* in this and other similar cases. First, *ACS* stands for the proposition that when a news report on an ongoing, newsworthy controversy is accurate and balanced, its contents are not defamatory when it presents “the gist of the claims and defenses” regarding the relevant controversy. *Id.* at 390. It is irrelevant that the defendant in *ACS* was the party who provided quotes to the newspaper, rather than the newspaper itself. In *ACS*, the court held that the defendant—the party who originally made the defamatory remark—was protected because his comment was published as part of fair coverage of the controversy. *Id.* at 390–91. It follows that a news outlet that republishes such a remark would be protected under the same analysis.

In addition, *ACS* demonstrates the Ohio Supreme Court’s acknowledgment of the public interest in reporting on newsworthy controversies and the need to ensure the flow of information regarding high-profile allegations of wrongdoing. *See Id.* at 391. The Ohio Supreme Court recognized the public policy underlying the widespread and longstanding tradition of recognizing certain exceptions to the republication rule: to allow the news media to report on ongoing controversies of public importance without fear of liability.

B. Other jurisdictions have applied the substantial truth doctrine in a similar manner to protect reports of third-party allegations.

“The substantial truth doctrine states that ‘[t]ruth will protect the defendant from liability even if the precise literal truth of the defamatory statement cannot be established,’ as long as the ‘gist’ or ‘sting’ of the statement is true.” *See generally* Meiring De Villiers, Substantial Truth in Defamation Law, 32 Am. J. Trial Advoc. 91, 99–100 (2008) (internal citations omitted). While the Ohio Supreme Court did not specifically cite to the substantial truth test in its determination in *ACS*, it did acknowledge this doctrine by finding that the article in question did not contain defamatory statements because, when considered as a whole, it accurately reported on the controversy. *ACS*, 133 Ohio St. 3d at 390 (finding that “[f]rom the views presented in the article, the average reader . . . could easily understand the gist of the claims and defenses[.]”). A number of state and federal courts have applied the substantial truth doctrine to situations similar to that in this case—specifically, where the news media has reported on newsworthy allegations during a live controversy without taking a position on the allegations. These cases apply an analysis similar to the one applied by the Ohio Supreme Court in *ACS* to bar claims for libel based on the truth of the report.

In one such case, the U.S. Court of Appeals for the Seventh Circuit considered defamation liability based on media reports of third-party allegations. *See Global Relief Found. v. N.Y. Times*, 390 F.3d 973 (7th Cir. 2004). In that case,

The New York Times reported that the Treasury Department had considered adding the Global Relief Foundation (“GRF”) to a list of organizations suspected to have terrorist connections in the wake of the September 11, 2001 terrorist attacks. GRF sued the *Times* for defamation, arguing that it had no ties to terrorist organizations and claiming that the *Times* report caused it severe reputational damage and loss of donations. *Id.* at 979–80. GRF argued that the *Times* “should be required to demonstrate not only that [it] accurately reported the government’s suspicions but that GRF was actually guilty of the conduct for which the government was investigating the group.” *Id.* at 980. The Seventh Circuit rejected this argument, finding that the report was substantially true.

In reaching that conclusion, the Seventh Circuit focused its analysis on the “gist” of the reporting: that the government suspected GRF harbored ties to terrorism, not that GRF *actually* harbored those ties. *Id.* at 986–87. (“[A]ll of the reports were either true or substantially true recitations of the government’s suspicions about and actions against GRF.”) Because it was the fact of the allegations—not the underlying truth of those allegations—that was the newsworthy “gist” of the reporting, the court determined the media defendants did not need to prove GRF actually funded terrorist organizations in order to escape

liability.² *Id.* In other words, the articles in question accurately reported the fact that GRF and other organizations were under suspicion of terrorist ties—a fact that was shown to be true.

The U.S. Court of Appeals for the Eighth Circuit similarly applied a substantial truth analysis in *Janklow v. Newsweek, Inc.*, 759 F.2d 644 (8th Cir. 1985), *rev'd in part on other grounds*, 788 F.2d 1300 (8th Cir. 1986) (*en banc*), which involved a report by *Newsweek* outlining allegations that South Dakota Governor William Janklow had raped a Native American girl during his career as an attorney. *Newsweek* reported that federal prosecutors had not found sufficient evidence to move forward with charges, but that a tribal court had found probable cause to believe the charges and had banned Janklow from practicing law on the reservation. *Id.* at 646. In upholding summary judgment in favor of *Newsweek* on Janklow's libel claims, the court determined that the report harmed Janklow's reputation as "the result of a materially accurate report of historical fact, not of an assertion by *Newsweek* that Janklow committed the alleged crime." *Id.* Therefore, the court held, because *Newsweek's* report was substantially true as an accurate

² While the Seventh Circuit noted that GRF was added to a list of organizations with terrorist ties *after* publication of the reports at issue, it was the substantial truth of the reporting about the allegations—not the substantial truth of the allegations themselves—that the court found most relevant. *Id.* at 987.

portrayal of the accusations against him, and because it did not take a position on those accusations, *Newsweek* could not be held liable for them.³

Multiple state courts have also recognized that the substantial truth doctrine can insulate the press from defamation liability for reporting on ongoing controversies. For example, the Texas Supreme Court stated in *Neely v. Wilson* that “it is possible for the gist of a broadcast to be mere allegation reporting (such that the truth of such a broadcast might be measured by its accuracy)[.]” 418 S.W.3d 52, 56 (Tex. 2013). Although the Texas Supreme Court ultimately determining that the doctrine of substantial truth did not apply to the particular facts of *Neely*, *id.* at 65–66, it recognized that substantial truth could prevent liability for publication of true allegation reporting. *Id.* at 65 (stating that the court did “not foreclose the possibility that the gist of some broadcasts may merely be allegation reporting, such that one measure for the truth of the broadcast could be whether it accurately relayed the allegations of a third party”).

³ Multiple federal district courts have applied similar reasoning. *See, e.g., Jewell v. NYP Holdings, Inc.*, 23 F. Supp. 2d 348 (S.D.N.Y. 1998) (finding a report that plaintiff was the “main” suspect in the Atlantic Olympics bombing substantially true because plaintiff was in fact “a” suspect, and disregarding the question of whether plaintiff had actually committed the bombing); *Basilus v. Honolulu Pub’g Co.*, 711 F. Supp. 548, 551 (D. Haw. 1989) (holding reporting that the family of assassinated Palauan president had received an anonymous letter suggesting that the plaintiff had taken part in the assassination substantially true because the article “simply reports that the relatives did receive such a letter” without making the accusation itself).

Louisiana courts have also applied the substantial truth doctrine to determine that news media does not face liability for reporting on third-party allegations that are part of a live controversy. For example, in *Thompson v. Emmis Television Broadcasting*, the Louisiana Court of Appeals held that a report based on allegations from sealed court documents that a pastor had embezzled from his church was substantially true, and a broadcaster that aired the report—which had simply reported the fact that such accusations existed—could not be held liable for defamation. 894 So.2d 480, 485, 486 (La. Ct. App. 2005), *writ denied*, 899 So.2d (La. 2005). In an analysis strikingly similar to the approach applied by the district court in this case, in determining the outcome of the substantial truth analysis, the *Thompson* court specifically pointed to the fact that “[t]he report that was broadcast was balanced[,]” as the station had given opportunity to the pastor and his supporters to comment, while also reporting on the position of the pastor’s critics. *Id.* at 485. A Kentucky court similarly applied the substantial truth analysis to find that a news station could not face defamation liability when it accurately reported that rumors existed in the community that a city housing director had displayed improper favoritism to a close female companion. *Hodge v. WCPO Television News*, No. 97-CI-02516, 2001 WL 1811681, at *2 (Ky. Cir. Ct. 2001).

- C. Still more jurisdictions have applied privileges, such as the neutral reportage privilege or the fair report privilege, to protect reporting of third-party allegations.

Certain privileges recognized in some jurisdictions, such as the fair report privilege and neutral reportage privilege, also ensure that news reports on allegations of wrongdoing are shielded from defamation liability. Although the neutral reportage and fair report privileges are not applicable in this case, they are part of the same strain of jurisprudence as the “balanced-report” methodology that the district court utilized as part of the established “defamatory meaning” analysis. Fair report, neutral reportage, and “balanced-report” all share a common policy goal: to allow the news media to inform the public about ongoing controversies on matters of public concern without fear of defamation liability.

For example, under the neutral reportage doctrine recognized by the U.S. Court of Appeals for the Second Circuit, news media may avoid defamation liability for accurate and disinterested reporting on serious accusations by a responsible, prominent source against a public figure. *See Edwards v. Nat’l Audubon Soc’y, Inc.*, 556 F.2d 113 (2d Cir. 1977). This is because “[w]hat is newsworthy about such accusations is that they were made” and the public interest is served when “the press [is] afforded the freedom to report on such charges without assuming responsibility for them.” *Id.* at 120.

Similarly, the fair report privilege, codified by Ohio, Ohio R.C. §§ 2317.04–.05,⁴ and adopted by other jurisdictions as well, originated at common law and recognizes the right for observers of public proceedings to repeat what was said—including any allegations therein—in a fair and accurate manner without fear of liability for libel. 50 Am. Jur. 2d *Libel and Slander* § 298; *see also* Restatement (Second) of Torts § 586 (1977). This privilege is recognized by many jurisdictions, either through common law or statute. *See, e.g., Yohe v. Nugent*, 321 F.3d 35 (1st Cir. 2003); *Jankovic v. Int’l Crisis Group*, 593 F.3d 22 (D.C. Cir. 2010); *Read v. News-Journal Co.*, 474 A.2d 119 (Del. 1984); *Phillips v. Evening Star Newspaper Co.*, 424 A.2d 78 (D.C. 1980).

The common policy rationales behind the Ohio “balanced-report” analysis and the neutral reportage and fair report privileges reinforces the fact that there is a wide body of law, developed by courts nationwide, that attempts to strike the appropriate balance between applying the common-law republication rule and recognizing the important role of the press in keeping the public apprised of ongoing controversies. The fact that the Ohio Supreme Court has declined to

⁴ In Ohio, the fair report privilege allows “[p]ublication of fair and impartial reports of legislative and executive proceedings[,]” Ohio R.C. § 2317.04, and “[p]ublication of fair and impartial reports of indictments, warrants, arrests, court filings or the contents thereof . . . unless published maliciously[.]” *Id.* § 2317.05.

apply the neutral reportage privilege, *Young v. Morning Journal*, 76 Ohio St.3d 627 (1996), does not indicate its unwillingness to strike this balance. Rather, its later decision in *ACS* demonstrates Ohio law finds its solution in a “balanced-report” analysis, which it applies to determine whether reasonable readers would construe a challenged statement as defamatory.

III. Multiple Ohio appellate courts, as well as courts from other jurisdictions, have applied the innocent construction rule, making it likely that the Ohio Supreme Court would continue to do so.

The district court also held, in the alternative, that the article as a whole, including its headline, and Statement 10 were not defamatory under the innocent construction rule. *See* Opinion & Order, Dkt. No. 54, PageID # 1042. Appellant argues that the Ohio Supreme Court has never squarely adopted the innocent construction rule and therefore that this Court should find that it would refuse to adopt the rule if given the opportunity. This argument is misguided in the face of plentiful Ohio precedent, including a case from the Ohio Supreme Court, endorsing the innocent construction rule, as well as precedent from surrounding jurisdictions, which has also adopted the rule.

Ohio courts have widely applied the innocent construction rule to hold that where a statement is susceptible to both an innocent interpretation and a defamatory one, the court should adopt the innocent interpretation. *See Yeager v. Local Union 20*, 6 Ohio St.3d 369, 372 (1983) *abrogated on other grounds by*

Welling v. Weinfeld, 113 Ohio St.3d 464 (2007); *see also* Susan Grogan Faller, et al., *Survey of Ohio Libel Law*, in *Media Libel Law 2017-2018 50-State Survey* 1295, 1299 (Media L. Resource Center ed., 2017).⁵ In *Yeager*, the Ohio Supreme Court applied this analysis and determined that the allegedly defamatory statements at issue in that case were “capable of two different meanings”—one hyperbolic opinion and one defamatory. *Id.* at 453. The *Yeager* court then adopted the innocent construction—that of hyperbolic opinion—and refused the defamatory interpretation, thereby finding that the statements were constitutionally protected opinion. *Id.* Though finding no liability for defamation because the statements constituted opinion, the Ohio Supreme Court conducted this analysis through the lens of the innocent construction rule, thereby adopting it as the law of

⁵ While Appellant argues that the *Yeager* court merely “described the innocent construction rule” without adopting it, Br. of Appellant at 37, this is a misinterpretation of the Ohio Supreme Court’s ruling for two reasons. First, the Ohio Supreme Court clearly applied the rule when it stated, after describing the innocent construction rule: “It is our view that . . . the language used is *capable of different meanings*; is mere hyperbole or rhetoric, and is an expression of opinion, not fact; and is protected.” *Id.* Second, the Ohio Supreme Court affirmed the Ohio Court of Appeals’ ruling regarding the defamation claims in *Yeager, id.*, and the appellate court had clearly found that “the words complained of by appellant could be innocently construed as statements of opinion, not statements of fact.” *Yeager v. Local Union 20, Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, No. L-82-020, 1982 WL 6541, at *6 (Ohio Ct. App. 1982). In fact, recognizing the application of the innocent construction rule, one court of appeals judge concurred in part and dissented in part, noting that “[t]he majority . . . finds that the statements are subject to an ‘innocent construction’, and thus, are not actionable.” *Id.* at *10.

Ohio. Since *Yeager*, more than a dozen Ohio courts have cited *Yeager* for the proposition that the innocent construction rule is law in Ohio. *See, e.g., Mangelluzzi v. Morley*, 40 N.E.3d 588, 599 (8th Dist. 2015); *Holley v. WBNS 10TV, Inc.*, 149 Ohio App. 3d 22, 27 (10th Dist. 2002); *Ferrari v. Plain Dealer Publ'g Co.*, 142 Ohio App. 3d 629, 642 (8th Dist. 2001); *Sethi v. WFMJ Television, Inc.*, 134 Ohio App.3d 796, 808 (7th Dist. 1999); *Early v. Toledo Blade*, 130 Ohio App. 3d 302, 321 (6th Dist. 1998); *Leal v. Holtvogt*, 123 Ohio App. 3d 51, 81 (2nd Dist. 1998); *Mendise v. Plain dealer Publ'g Co.*, 69 Ohio App. 3d 721, 726 (8th Dist. 1990).

Ohio joins other jurisdictions in its adoption of the innocent construction rule. For example, in Illinois, where a statement is capable of a defamatory and a non-defamatory meaning, it “is to be considered in context, with the words and implications therefrom given their natural and obvious meaning[.]” *Chapski v. Copley Press, Inc.*, 92 Ill. 2d 344, 442 (1982). Where the statement may be naturally understood as either defamatory or non-defamatory, the statement cannot be actionable *per se*. *Id.* Specifically, the Illinois innocent construction rule does not require the innocent interpretation to be the more likely interpretation, but only that it be a reasonable understanding of the statement. *Mittelman v. Witous*, 135 Ill. 2d 220 (1989). Similarly, in Missouri, courts have noted that in determining defamatory meaning, a statement must “be unequivocally” defamatory. *Walker v.*

Kan. City Star Co., 406 S.W.2d 44, 51 (Mo. 1966). Further, the Missouri Supreme Court has determined that statements “should be construed in their most innocent sense.” *Id.*

Thus, given the application of the innocent construction rule both within Ohio and in other jurisdictions, and especially given the application of the rule by the Ohio Supreme Court itself, it is likely that the Ohio Supreme Court would continue to apply the doctrine to cases like this one. The district court, therefore, did not err in finding that Appellees are not liable for defamation because the allegedly defamatory statements are capable of an innocent interpretation.

CONCLUSION

For the foregoing reasons, *amici* urge this Court to affirm the judgment below dismissing Appellant's claims.

Dated: March 11, 2019

Respectfully submitted,

/s/ Bruce D. Brown

Bruce D. Brown

Counsel of Record

Katie Townsend, Esq.

Caitlin Vogus, Esq.

Lindsie Trego, Esq.

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th Street NW, Suite 1020

Washington, DC 20005

bbrown@rcfp.org

(202) 795-9300

*Additional counsel for *amici* are listed in
Appendix A.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief of *Amici Curiae* complies with:

- 1) the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 5,334 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as calculated by the word-processing system used to prepare the brief; and
- 2) the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14-point Times New Roman.

/s/ Bruce D. Brown

Bruce D. Brown, Esq.

Counsel of Record

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

Dated: March 11, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing Brief of *Amici Curiae* electronically with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system on March 11, 2019.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Bruce D. Brown

Bruce D. Brown

Counsel of Record

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

APPENDIX A**ADDITIONAL COUNSEL FOR *AMICI CURIAE***

Richard A. Bernstein
Vice President and Deputy General
Counsel
Advance Publications, Inc.
One World Trade Center
New York, NY 10007

Jim Ewert, General Counsel
California News Publishers
Association
2701 K St.
Sacramento, CA 95816

Kevin M. Goldberg
Fletcher, Heald & Hildreth, PLC
1300 N. 17th St., 11th Floor
Arlington, VA 22209
*Counsel for American Society of News
Editors*
*Counsel for Association of Alternative
Newsmedia*

Terry Francke
General Counsel
Californians Aware
2218 Homewood Way
Carmichael, CA 95608

Karen Kaiser
General Counsel
The Associated Press
200 Liberty Street
20th Floor
New York, NY 10281

Gayle C. Sproul
CBS Broadcasting Inc.
Senior Vice President/Associate
General Counsel
51 West 52nd Street, NY, NY 10019
212.975.3095
gayle.sproul@cbs.com
Counsel for CBS News

Dan Krockmalnic
Boston Globe Media Partners, LLC
1 Exchange Place
Boston, MA 02109
617-929-7157
*Counsel for Boston Globe Media
Partners, LLC*
Counsel for STAT

Rachel Matteo-Boehm
Bryan Cave LLP
560 Mission Street, Suite 2500
San Francisco, CA 94105
Counsel for Courthouse News Service

Jason P. Conti
Jacob P. Goldstein
Dow Jones & Company, Inc.
1211 Avenue of the Americas
New York, NY 10036

David M. Giles
Vice President/
Deputy General Counsel
The E.W. Scripps Company
312 Walnut St., Suite 2800
Cincinnati, OH 45202

Barbara W. Wall
Senior Vice President & Chief Legal
Officer
Gannett Co., Inc.
7950 Jones Branch Drive
McLean, VA 22107
(703)854-6951

Juan Cornejo
The McClatchy Company
2100 Q Street
Sacramento, CA 95816

Kurt Wimmer
Covington & Burling LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
Counsel for The Media Institute
Counsel for the News Media Alliance

George Freeman
Media Law Resource Center
520 Eighth Avenue
North Tower, 20th Floor
New York, NY 10018
Telephone: (212) 337-0200
Telecopier: (212) 337-9893
Email: gfreeman@medialaw.org

Mickey H. Osterreicher
200 Delaware Avenue

Buffalo, NY 14202
Counsel for National Press
Photographers Association
Beth R. Lobel, Esq.
Senior Vice President, NBCUniversal
News Group
NBCUniversal Media, LLC
30 Rockefeller Plaza
New York, NY 10112
Counsel for NBC News

Ivan Zimmerman
General Counsel
New York Public Radio
160 Varick Street
New York, NY 10013

Dina Sforza, Esq.
VP/General Counsel
Newsday LLC
235 Pinelawn Road
Melville, NY 11747

Laura R. Handman
Alison Schary
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006
Thomas R. Burke
Davis Wright Tremaine LLP
Suite 800
500 Montgomery Street
San Francisco, CA 94111
Counsel for Online News Association

Richard J. Tofel
President
ProPublica

155 Avenue of the Americas, 13th
Floor
New York, NY 10013

D. Victoria Baranetsky
General Counsel
Reveal from The Center for
Investigative Reporting
1400 65th Street, Suite 200
Emeryville, California 94608

Barry Faber
Exec. V.P./General Counsel
Sinclair Broadcast Group, Inc.
10706 Beaver Dam Rd,
Hunt Valley, MD 21030

Bruce W. Sanford
Mark I. Bailen
Baker & Hostetler LLP
1050 Connecticut Ave., NW
Suite 1100
Washington, DC 20036
*Counsel for Society of Professional
Journalists*

Karen H. Flax
VP/Deputy General Counsel
Tribune Publishing Company
160 North Stetson Avenue
Chicago, Illinois 60601

Lucinda Treat
Chief Legal Officer
VICE Media
49 South 2nd Street
Brooklyn, NY 11249