

Court of Appeals

STATE OF NEW YORK



In the Matter of an Application for a Subpoena Ordering the
Personal Appearance of Frances Robles as a Material Witness in:

PEOPLE OF THE STATE OF NEW YORK,

Appellant,

—against—

CONRADO JUAREZ,

Defendant,

FRANCES ROBLES,

Non-Party Respondent.

**MOTION FOR LEAVE TO FILE BRIEF FOR *AMICI CURIAE*
THE REPORTERS COMMITTEE FOR FREEDOM
OF THE PRESS AND 48 MEDIA ORGANIZATIONS*
IN SUPPORT OF NON-PARTY RESPONDENT**

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**COURT OF APPEALS OF THE
STATE OF NEW YORK**

THE PEOPLE OF THE STATE OF
NEW YORK,

Appellant,

vs.

CONRADO JUAREZ,

Defendant.

FRANCES ROBLES,

Respondent.

APL-2017-0057

New York County Clerk's Index

No. 30222/15

**NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENT FRANCES ROBLES**

PLEASE TAKE NOTICE, that upon the annexed affirmation of Mark I. Bailen, dated October 6, 2017, the Reporters Committee for Freedom of the Press and 48 media organizations (collectively, the “News Media Movants”) will move this Court, located at 20 Eagle Street, Albany, New York, 12207, on the 16th of October, 2017, for an order granting the News Media Movants leave to file the brief attached hereto as *amici curiae* in support of Respondent in the above-captioned action and for such other and further relief as the court may deem just and proper under the circumstances.

Respondent Frances Robles, Appellant the People of the State of New York,
and Defendant Conrado Juarez have consented to the filing of the proposed *amici*
curiae brief attached hereto.

Dated: New York, New York
October 6, 2017

Respectfully submitted,



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**COURT OF APPEALS
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vs.

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New York County Clerk's Index
No. 30222/15

**AFFIRMATION OF MARK I. BAILEN IN SUPPORT OF
MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENT**

I, Mark I. Bailen, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirm the following to be true under penalty of perjury:

1. I am a partner at Baker & Hostetler LLP, located at 1050 Connecticut Avenue NW, Suite 1100, Washington, D.C. 20036-5403, and am counsel of record for the Reporters Committee for Freedom of the Press, ALM Media, LLC, American Broadcasting Companies, Inc., American Society of News Editors, The Associated Press, Association of Alternative Newsmedia, Association of American

Publishers, Inc., Bloomberg L.P., The Boston Globe, LLC, BuzzFeed, The Center for Investigative Reporting, Committee to Protect Journalists, Courthouse News Service, Daily News, LP, Dow Jones & Company, Inc., The E.W. Scripps Company, First Amendment Coalition, First Look Media Works, Inc., Fox News Network LLC, Freedom of the Press Foundation, Gannett Co., Inc., GateHouse Media, LLC, Hearst Corporation, Inter American Press Association, International Documentary Assn., International Press Institute, International Press Institute North American Committee, Investigative Reporters and Editors, Investigative Reporting Program, Investigative Reporting Workshop at American University, The Media Consortium, The Miami Herald, MPA – The Association of Magazine Media, National Newspaper Association, The National Press Club, National Press Photographers Association, Native American Journalists Association, NBCUniversal Media, LLC, News Media Alliance, Newsday LLC, The NewsGuild - CWA, Online News Association, Radio Television Digital News Association, The Reporters Committee for Freedom of the Press, Reporters Without Borders, The Seattle Times Company, Society of Professional Journalists, tronc, Inc., Tully Center for Free Speech, and The Washington Post (collectively, the “News Media Movants”). I submit this affirmation in support of the News Media Movants’ motion for leave to file a brief as *amici curiae* in support of Respondent Frances Robles.

2. Attached hereto is a true and correct copy of the brief that the News Media Movants seek leave to file as *amici curiae*. The News Media Movants have duly authorized me to submit this brief on their behalf. Respondent Frances Robles, Appellant the People of the State of New York, and Defendant Conrado Juarez consent to the News Media Movants' filing of this motion and *amici curiae* brief.

3. The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided assistance and research in First Amendment and Freedom of Information Act litigation since 1970. The interests of all other News Media Movants are set forth in Appendix A to the proposed *amici curiae* brief, which is attached hereto. The News Media Movants include the publishers of daily and weekly newspapers and magazines, professional societies for reporters, news editors, and photographers, and advocates for the news media and the First Amendment.

4. The News Media Movants seek leave to file the attached brief because this appeal presents an issue of great importance to them: the circumstances under which a reporter may be compelled to reveal nonconfidential, unpublished information under the New York Shield Law. As representatives and members of

the press, *amici* frequently rely on the reporter's privilege to protect their ability to gather the news and report on matters of public concern. *Amici* thus have a strong interest in ensuring that courts interpret the New York Shield Law in a manner that protects the privilege against compelled disclosure of nonconfidential but unpublished information obtained during the newsgathering process and thereby facilitates the news media's ability to disseminate news to the public.

5. Given the News Media Movants' experience with the New York Shield Law, other state shield laws, and the federal reporter's privilege, the News Media Movants provide a unique perspective and can identify law and/or arguments that might otherwise escape the Court's consideration and otherwise provide information that would be of assistance to the Court. Specifically, the proposed brief of *amici curiae* attached to this affirmation explains the history of the New York Shield Law's qualified reporter's privilege for nonconfidential, unpublished materials, elaborates on the impact of requiring journalists to reveal nonconfidential but unpublished notes and to testify regarding their newsgathering activities, and argues for a robust interpretation of the Shield Law's provisions.

6. WHEREFORE, I respectfully request that this Court grant the News Media Movants' motion for leave to file a brief as *amici curiae* in support of Respondent, a copy of which is attached hereto.

Dated: October 6, 2017
New York, New York



Mark I. Bailen

EXHIBIT A

Court of Appeals

STATE OF NEW YORK



In the Matter of an Application for a Subpoena Ordering the
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**BRIEF FOR AMICI CURIAE THE REPORTERS COMMITTEE FOR
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IN SUPPORT OF NON-PARTY RESPONDENT**

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American Society of News Editors
The Associated Press
Association of Alternative Newsmedia
Association of American Publishers, Inc.
Bloomberg L.P.
The Boston Globe, LLC
BuzzFeed
The Center for Investigative Reporting
Committee to Protect Journalists
Courthouse News Service
Daily News, LP
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The E.W. Scripps Company
First Amendment Coalition
First Look Media Works, Inc.
Fox News Network LLC
Freedom of the Press Foundation
Gannett Co., Inc.
GateHouse Media, LLC
Hearst Corporation
Inter American Press Association
International Documentary Assn.
International Press Institute
International Press Institute North American Committee
Investigative Reporters and Editors
Investigative Reporting Program
Investigative Reporting Workshop at American University
The Media Consortium
The Miami Herald
MPA – The Association of Magazine Media
National Newspaper Association
The National Press Club
National Press Photographers Association
Native American Journalists Association
NBCUniversal Media, LLC

News Media Alliance
Newsday LLC
The NewsGuild - CWA
Online News Association
Radio Television Digital News Association
Reporters Without Borders
The Seattle Times Company
Society of Professional Journalists
tronc, Inc.
Tully Center for Free Speech
The Washington Post

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INTEREST OF AMICI CURIAE

Amici curiae are the Reporters Committee for Freedom of the Press and 48 media organizations. *Amici* are described in more detail in Appendix A.

As publishers, news media organizations, and representatives of the news media and journalists, *amici* have a significant interest in the questions of law presented in this appeal. The qualified privilege for nonconfidential but unpublished information obtained during the newsgathering process established in the New York Shield Law, N.Y. Civ. Rights Law § 79-h (the “Shield Law”), has proven essential to journalists’ ability to gather the news and report on matters of public concern. Journalists, including *amici*, frequently rely on the Shield Law to protect them from efforts to compel the production of nonconfidential, unpublished information, the revelation of which would undermine their ability to disseminate news to the public.

Thus, *amici* are directly affected by judicial interpretations of the Shield Law. *Amici* also have significant experience with the legal issues arising in the newsgathering context and a direct interest in protecting the freedom of the press. *Amici* urge this Court to affirm the decision of the Appellate Division, First Department for the reasons set forth in Respondent’s brief and submit this brief to highlight the historical importance of, and broader interests protected by, the Shield Law’s qualified reporter’s privilege for nonconfidential information.

INTRODUCTION AND SUMMARY OF ARGUMENT

In this appeal, appellant the People of the State of New York (“Appellant”) asks this Court to reverse the decision of the Appellate Division, First Department granting Respondent Frances Robles’ (“Robles”) motion to quash a subpoena. Appellant issued a subpoena to Robles, a reporter for *The New York Times*, seeking her unpublished notes and testimony regarding an interview she conducted with defendant Conrado Juarez. Robles moved to quash the subpoena under the Shield Law’s qualified reporter’s privilege for nonconfidential, unpublished information.

The Appellate Division, First Department correctly interpreted the Shield Law’s strict standards for determining when the qualified privilege against disclosure of nonconfidential information is overcome. In particular, the Appellate Division correctly determined that the information Appellant sought was not “critical or necessary” to its proof of Juarez’s guilt—one part of the three-part test that must be met to overcome the Shield Law’s qualified reporter’s privilege. *See Matter of People v. Juarez*, 143 A.D.3d 589 (2016). Appellant’s argument that it is entitled to present “all relevant evidence” in this case, *see* Br. for Appellant 7, 24, is contrary to the Shield Law’s requirement that the subpoenaing party show an absolute need for the material sought.

Amici write to provide the Court with the relevant history of the Shield Law, and, in particular, the development of its qualified privilege against the compelled

disclosure of nonconfidential but unpublished information obtained in the course of newsgathering. *Amici* also emphasize the important role the qualified reporter's privilege for nonconfidential information plays in protecting the news media's ability to provide the public with information. In keeping with this state's long tradition of strong protections for freedom of the press and the important public policy concerns animating the Shield Law, the statute's three-part test for when the qualified reporter's privilege may be overcome must be robustly enforced. Thus, lower New York courts and federal courts applying the Shield Law have concluded that journalists' nonconfidential, unpublished material is "critical or necessary to the maintenance of a party's claim, defense or proof of an issue material thereto" only if the party's claim or defense "virtually rises or falls" on the material sought. *See, e.g., Flynn v. NYP Holdings Inc.*, 235 A.D.2d 907, 908 (3d Dept. 1997); *In re Application to Quash Subpoena to NBC, Inc. (Graco)*, 79 F.3d 346, 351 (2d Cir. 1996). This Court should reach the same conclusion.

ARGUMENT

I. New York has long protected journalists from compelled disclosure of confidential sources and nonconfidential unpublished information.

The New York Shield Law’s protections for journalists’ confidential sources and nonconfidential unpublished information arise from New York’s longstanding practice of vigorously protecting press freedom. As this Court has recognized, “New York has a long tradition, with roots dating back to the colonial era, of providing the utmost protection of freedom of the press.” *Holmes v. Winter*, 22 N.Y.3d 300, 307 (2013). This tradition dates back to at least 1735, when a New York jury acquitted newspaper publisher John Peter Zenger of the crime of seditious libel for “publishing articles critical of the New York colonial Governor after [Zenger] refused to disclose his source.” *Id.* (quoting *Matter of Beach v. Shanley*, 62 N.Y.2d 241, 255 (1984) (Wachtler, J., concurring)).

Since that time, New York has established itself as “a cultural center for the Nation.” *Immuno AG v. Moor-Jankowski*, 77 N.Y.2d 235, 249 (1991). In recognition of “the critical role that the press would play in our democratic society,” New York has created “a hospitable environment for journalists and other purveyors of the written word, leading the burgeoning publishing industry to establish a home in our state during the early years of our nation’s history.” *Holmes*, 22 N.Y.3d at 307. Consequently, New York has become “the media capital of the country if not the world.” *Id.* at 316.

New York’s strong tradition of protecting the freedom of the press is embodied in the free speech and free press guarantees of the New York Constitution, adopted in 1821. *Id.* at 307. These guarantees, which begin “with the ringing declaration that ‘[e]very citizen may freely speak, write and publish . . . sentiments on all subjects,’” *Immuno AG*, 77 N.Y.2d at 249 (quoting N.Y. Const., art. I, § 8), are far more expansive than those of the First Amendment. *Holmes*, 22 N.Y.3d at 307. As such, they are “in keeping with ‘the consistent tradition in this State of providing the broadest possible protection to the sensitive role of gathering and disseminating news of public events.’” *Id.* at 308 (quoting *O’Neill v. Oakgrove Constr.*, 71 N.Y.2d 521, 529 (1988) (internal quotation marks omitted)).

This state’s commitment to freedom of the press is evident in its Shield Law, which since 1970 has protected those who gather and report the news. *See id.* at 308–09 (stating that “[i]t is clear from the legislative history of [the Shield Law] that the legislature believed that [its] protections were essential to maintenance of our free and democratic society”). Over time, the Legislature has repeatedly amended the Shield Law to strengthen its provisions. *Id.* at 310. In 1990, for example, the Legislature provided for a qualified protection when nonconfidential but unpublished information is at issue. N.Y. Civ. Rights Law § 79-h.

The genesis of the Shield Law’s qualified reporter’s privilege for nonconfidential information can be traced back to this Court’s decisions in *Matter*

of *Knight-Ridder Broadcasting v. Greenberg*, 70 N.Y.2d 151 (1987), and *O’Neill*. In *Matter of Knight-Ridder Broadcasting*, this Court held that the Shield Law, as it was written in 1987, did not extend to nonconfidential sources or information obtained in gathering the news. 70 N.Y.2d at 153. However, less than a year later, this Court held in *O’Neill* that Article I, § 8 of the New York Constitution and the First Amendment of the federal Constitution provide a qualified privilege to nonconfidential materials prepared or collected in the course of newsgathering. 71 N.Y.2d at 524.

The *O’Neill* Court adopted a three-part test set forth by federal courts, including the Second Circuit, that had recognized a qualified reporter’s privilege under the First Amendment or federal common law. *Id.* at 527 (citing *In re Petroleum Prods. Antitrust Litig.*, 680 F.2d 5, 9 (2d Cir. 1982); *Riley v. City of Chester*, 612 F.2d 708, 717 (3d Cir. 1979); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 438 (10th Cir. 1977); *Baker v. F & F Inv.*, 470 F.2d 778, 784 (2d Cir. 1972); *Montezuma Realty Corp. v. Occidental Petroleum Corp.*, 494 F. Supp. 780 (S.D.N.Y. 1980)). It held that a litigant may obtain nonconfidential, unpublished materials obtained or generated in the course of newsgathering “only if the litigant demonstrates, clearly and specifically, that the items sought are (1) highly material, (2) critical to the litigant’s claim, and (3) not otherwise available.” *O’Neill*, 71 N.Y.2d at 527; *see also id.* at 529 (adopting the three-part test). Accordingly, the

Court concluded, “if the material sought is pertinent merely to an ancillary issue in the litigation, not essential to the maintenance of the litigant’s claims, or obtainable through an alternative source, disclosure may not be compelled.” *Id.* at 527.

In 1990, following the decisions in *Matter of Knight-Ridder Broadcasting* and *O’Neill*, the Legislature amended the Shield Law to clarify and strengthen its provisions. *Holmes*, 22 N.Y.3d at 309–10. Among other things, the amendments codified the qualified reporter’s privilege for nonconfidential material and the three-part test enunciated in *O’Neill*. *Id.* at 308; *see* N.Y. Civ. Rights Law § 79-h. Thus, the Shield Law’s privilege for nonconfidential news provides that a journalist cannot be compelled to reveal his or her nonconfidential, unpublished materials or information unless:

the party seeking such news has made a clear and specific showing that the news: (i) is highly material and relevant; (ii) is critical or necessary to the maintenance of a party’s claim, defense or proof of an issue material thereto; and (iii) is not obtainable from any alternative source.

N.Y. Civ. Rights Law § 79-h(c). Moreover, the Shield Law provides that a disclosure order, if any, be narrowly drawn to apply only to that information for which the required three-part showing has been made. *Id.*

II. The Shield Law’s qualified reporter’s privilege against compelled disclosure of nonconfidential but unpublished information is critical to the news media’s ability to inform the public.

Protection of confidential information obtained in the course of newsgathering is a core part of the Shield Law because it protects the anonymity of confidential sources and journalists’ corresponding ability to report the news. *Holmes*, 22 N.Y.3d at 316. In addition, as both the New York Legislature and New York courts have repeatedly recognized, the Shield Law’s qualified reporter’s privilege against the compelled disclosure of *nonconfidential* information is also critical to the free flow of information to the public. Accordingly, the intrusion onto the newsgathering activities of Robles and other reporters when they are forced to reveal even nonconfidential information is not “minimal,” as Appellant claims. *See* Br. for Appellant 24; *see also* Reply Br. for Appellant 19 (stating that requiring Robles to testify “is plainly not unduly onerous” and will “pose an inconvenience to her for a brief amount of time”).

“It is axiomatic, and a principle fundamental to our constitutional way of life, that where the press remains free so too will a people remain free. Freedom of the press may be stifled by direct or, more subtly, by indirect restraints.” *Baker*, 470 F.2d at 785. The reporter’s privilege for nonconfidential unpublished information serves the “paramount public interest in the maintenance of a vigorous, aggressive and independent press capable of participating in robust,

unfettered debate over controversial matters.” *Id.* at 782. It protects the “pivotal function of reporters to collect information for public dissemination.” *In re Petroleum Prods. Antitrust Litig.*, 680 F.2d at 8; *see also Gonzales v. NBC, Inc.*, 194 F.3d 29, 35 (2d Cir. 1998) (stating that the public policy concerns underlying the privilege for confidential information enunciated in *Baker* and *In re Petroleum Prods. Antitrust Litig.* “are relevant regardless whether the information sought from the press is confidential”). The Second Circuit has succinctly explained the concerns animating the reporter’s privilege for nonconfidential information:

If the parties to any lawsuit were free to subpoena the press at will, it would likely become standard operating procedure for those litigating against an entity that had been the subject of press attention to sift through press files in search of information supporting their claims. The resulting wholesale exposure of press files to litigant scrutiny would burden the press with heavy costs of subpoena compliance, and could otherwise impair its ability to perform its duties—particularly if potential sources were deterred from speaking to the press, or insisted on remaining anonymous, because of the likelihood that they would be sucked into litigation. Incentives would also arise for press entities to clean out files containing potentially valuable information lest they incur substantial costs in the event of future subpoenas. And permitting litigants unrestricted, court-enforced access to journalistic resources would risk the symbolic harm of making journalists appear to be an investigative arm of the judicial system, the government, or private parties.

Gonzales, 194 F.3d at 35.

For similar reasons, this Court, too, has noted that a qualified reporter's privilege for nonconfidential information is needed to protect "[t]he ability of the press freely to collect and edit news." *O'Neill*, 71 N.Y.2d at 526. As the Court stated in *O'Neill*:

The autonomy of the press would be jeopardized if resort to its resource materials, by litigants seeking to utilize the newsgathering efforts of journalists for their private purposes, were routinely permitted. . . . Moreover, because journalists typically gather information about accidents, crimes, and other matters of special interest that often give rise to litigation, attempts to obtain evidence by subjecting the press to discovery as a nonparty would be widespread if not restricted on a routine basis. The practical burdens on time and resources, as well as the consequent diversion of journalistic effort and disruption of newsgathering activity, would be particularly inimical to the vigor of a free press.

71 N.Y.2d at 526–27 (internal citations omitted).

As these and other courts have recognized, the qualified reporter's privilege for nonconfidential but unpublished materials protects journalists' ability to cultivate the trust of sources of newsworthy information. Sources who believe that reporters are likely to be forced to testify against them in court, even on nonconfidential matters, or who believe that reporters are investigative agents of the government, may refuse to speak to reporters at all. *Pugh v. Avis Rent A Car Sys., Inc.*, No. M8-85, 1997 WL 669876, at *3 (S.D.N.Y. Oct. 28, 1997) (noting that "[m]any doors will be closed to reporters who are viewed as investigative

resources of litigants”). Other sources may still agree to speak to reporters, but only warily and with much less candor.

In addition, the qualified reporter’s privilege for nonconfidential information safeguards the editorial discretion and independence of the news media by “protect[ing] the press’s independence in its ‘selection and choice of material for publication.’” *Pugh*, 1997 WL 669876, at *3 (quoting *CBS, Inc. v. Democratic Nat’l Comm.*, 412 U.S. 94, 124 (1973)). It ensures that journalists will confidently investigate and report on matters of public controversy and maintain records and files regarding prior reporting without fear that their work will favor or disfavor their sources in litigation. Without such a qualified privilege, reporters or editors, especially those without large news operations backing them up, may be more reluctant to investigate topics that may result in court proceedings or less likely to publish “any information they fear would excite the interest of current or prospective litigants.” *United States v. Marcos*, No. SSSS 87 CR. 598 (JFK), 1990 WL 74521, at *2 (S.D.N.Y. June 1, 1990); *see also United States ex rel. Vuitton Et Fils S.A. v. Karen Bags, Inc.*, 600 F. Supp. 667, 670 (S.D.N.Y. 1985). Similarly, the threat that nonconfidential but unpublished materials may be subject to disclosure in a lawsuit “may induce reporters to discard, in the ordinary course, potentially discoverable materials to avoid exposure to judicial process by subpoena duces tecum.” *O’Neill*, 71 N.Y.2d at 533 (Bellacosa, J., concurring); *see*

also Gonzales, 194 F.3d at 35. As a result, information gleaned from past newsgathering that could enrich current reporting will be lost.

The qualified reporter's privilege also helps shield the news media from the otherwise overwhelming numbers of subpoenas seeking nonconfidential information that would diminish their time, resources, and attention. Indeed, because many subpoenas seek nonconfidential information, the impact on reporters when they are asked to reveal nonconfidential but unpublished information is severe. See RonNell Andersen Jones, *Media Subpoenas: Impact, Perception, and Legal Protection in the Changing World of American Journalism*, 84 Wash. L. Rev. 317, 354–74 (Aug. 2009); Reporters Comm. for Freedom of the Press, *Agents of Discovery: A Report on the Incidence of Subpoenas Served on the News Media in 2001*, at 8–9 (2003), available at <http://rcfp.org/x?LgqE>. Because journalists typically gather information about controversial events that frequently can or do result in prosecutions or civil litigation, such as accidents, crimes, and government misconduct, see *O'Neill*, 71 N.Y.2d at 526, they are “a more likely target for subpoenas, which, in turn, will generate cost and diversion in time and attention from journalistic pursuits,” *id.* at 533 (Bellacosa, J., concurring).

Indeed, the legislative history of the 1990 amendments to the Shield Law indicated that lawmakers were particularly concerned about requests to the news media for nonconfidential information in criminal cases, where journalists

“encounter the *most* problematic incursions into the integrity of the editorial process when they are drawn into the criminal justice system merely because they have reported on a crime.” Governor’s Program Bill Mem., Bill Jacket, L. 1990, ch. 33, 1990 N.Y. Legis. Ann. at 11 (emphasis added); Governor’s Approval Mem., Bill Jacket, L. 1990, ch. 33, 1990 N.Y. Legis. Ann. at 13 (noting that “journalists are all too often drawn into the criminal justice system because they have reported on a crime”); *see also United States v. Burke*, 700 F.2d 70, 77 (2d Cir. 1983) (stating that “the important social interests in the free flow of information that are protected by the [federal] reporter’s qualified privilege are particularly compelling in criminal cases. Reporters are to be encouraged to investigate and expose, free from unnecessary government intrusion, evidence of criminal wrongdoing”).

In sum, the qualified reporter’s privilege for nonconfidential, unpublished information encourages sources to speak with reporters, protects the press’s editorial independence and willingness to report on controversial subjects, and frees the news media to spend their time and resources reporting the news. It is the public, ultimately, that benefits from these effects of the privilege. Reporters’ ability to protect nonconfidential information from disclosure is essential to the free flow of information from the news media to the public. Without the privilege, the news media—and thereby, the public—would lose its source of information on

matters of public concern such as crime, corporate malfeasance, and government corruption.

III. Nonconfidential, unpublished information is “critical or necessary” to the maintenance of a party’s claim only if the claim virtually rises or falls with the admission or exclusion of the information sought.

To overcome the qualified reporter’s privilege for nonconfidential, unpublished information, the party seeking the information must make a clear and specific showing that three statutory requirements are met, one of which is that the information is “critical or necessary to the maintenance of a party’s claim, defense or proof of an issue material thereto.” N.Y. Civ. Rights Law § 79-h(c). Consistent with the legislative history of the Shield Law and the public policy reasons undergirding the statute, New York courts and the Second Circuit have interpreted this requirement narrowly. These courts have held—as this Court should hold—that information is “critical or necessary” only if a litigant’s claim “virtually rises or falls” with the admission or exclusion of the information sought.

A. The “virtually rises or falls” formulation of the “critical or necessary” prong of the Shield Law is in accord with New York precedent.

Numerous New York courts have held that material is critical or necessary only if a party’s claim “virtually rises or falls” depending on whether the material is admitted or excluded. *See Flynn*, 235 A.D.2d at 908; *Prince v. Fox Television Stations, Inc.*, No. 107129/2011, 2012 WL 3705165, at *7 (Sup. Ct. N.Y. Cnty. Aug. 28, 2012); *Matter of Subpoena Duces Tecum to Evans*, No. 305815/11, 2012

WL 555087, at *2 (Sup. Ct. Bronx County Jan. 13, 2012); *Guice-Mills v. Forbes*, 12 Misc. 3d 852, 856 n.3 (Sup. Ct. N.Y. County 2006); *Matter of Am. Broad. Cos.*, 189 Misc. 2d 805, 808 (Sup. Ct. N.Y. County 2001); *Matter of Grand Jury Subpoenas (NBC)*, 178 Misc. 2d 1052, 1058 (Sup. Ct. N.Y. County 1998).

These holdings are consistent with Second Circuit case law. The Second Circuit and federal district courts within the Second Circuit have applied the “virtually rises or falls” formulation in interpreting both the Shield Law, when sitting in diversity, and the federal common law or First Amendment reporter’s privilege. *See, e.g., Baker v. Goldman Sachs & Co.*, 669 F.3d 105, 108 (2d Cir. 2012); *Graco*, 79 F.3d at 351; *Sommer v. PMEC Assocs. and Co.*, No. 88 CIV. 2537 (JFK), 1991 WL 73858, at *3 (S.D.N.Y. May 1, 1991); *Marcos*, 1990 WL 74521, at *3.

Appellant argues that these federal decisions are of no persuasive authority because they are rooted in case law applying federal law, not the Shield Law. *Br.* for Appellant 46–47. Specifically, appellant argues that although *Graco* was interpreting the Shield Law, it relied on *Marcos*, which in turn relied upon *Burke*, and that *Marcos* and *Burke* were both federal criminal prosecutions. *Id.* at 47. Appellant’s argument, however, ignores the history of the Shield Law.

In formulating the three-part test for overcoming the qualified reporter’s privilege for nonconfidential information in *O’Neill*, this Court itself relied upon

the same federal case law that the *Burke* court had cited. *See O’Neill*, 71 N.Y.2d at 527 (citing *In re Petroleum Prods. Antitrust Litig.*, 680 F.2d at 9; *Riley*, 612 F.2d at 717; *Silkwood*, 563 F.2d at 438; *Baker*, 470 F.2d at 784; *Montezuma Realty Corp.*, 494 F. Supp. 780; *see also Burke*, 700 F.2d at 77 (citing *Baker*, 470 F.2d at 783–85 and *Silkwood*, 563 F.2d at 438). The Legislature then largely codified the *O’Neill* test in the 1990 amendments to the Shield Law. *Holmes*, 22 N.Y.3d at 308. Thus, the Shield Law’s three-part test with respect to nonconfidential information is itself rooted in federal case law applying the federal reporter’s privilege. *See Sommer*, 1991 WL 73858, at *2 (S.D.N.Y. May 1, 1991) (noting that the three requirements in *Burke* for overcoming the federal reporter’s privilege “have been codified” in the New York Shield Law). Accordingly, federal case law interpreting even the federal reporter’s privilege is of persuasive value to this Court.

B. The decision in *People v. Combest* employed a high standard for evaluating the “critical or necessary” prong of the Shield Law and rests on unique facts.

Appellant argues that this Court’s decision in *People v. Combest*, 4 N.Y.3d 341 (2005), demonstrates that a litigant is not required to show that his claim rises or falls based on the information sought in order to overcome the Shield Law’s qualified privilege for nonconfidential information. Br. for Appellant at 30–34. However, *Combest* is distinguishable from the instant case because the film production company in that case filmed a custodial interrogation of the defendant

by the police. In addition, contrary to Appellant's arguments, *see* Br. for Appellant 34, *Combest* did not hold that any information supporting a criminal litigant's theory at trial is "critical or necessary" under the Shield Law.

In *Combest*, a 17-year-old was charged with murder after a shootout in which a bystander was killed. 4 N.Y.3d at 343. Police had permitted Hybrid Films Inc., a production company that was creating a documentary about the Brooklyn North Homicide Task Force, "to film throughout [the] defendant's arrest and subsequent interrogation, during which he gave oral and written statements confessing to his participation in the shootout, but attempting to explain his actions as justified by self-defense." *Id.* Because the police did not film the interrogation, Hybrid had the only videotape of it. *Id.* Subsequently, the defendant made a second confession to an assistant district attorney in which he stated that "he and his friends had been forced to return fire after being shot at by a drug dealer and his associate." *Id.* at 343–44. This confession was filmed by the prosecution. *Id.*

Before trial, the defendant served a subpoena on Hybrid for the unbroadcast portions of the videotape of his arrest and interrogation and informed the trial court that he intended to claim as part of his defense that his statements to the police were involuntary. *Id.* at 344, 348. Hybrid moved to quash the subpoena under the Shield Law. *Id.* at 344. The trial court ordered Hybrid to produce the tapes to the parties, but the Appellate Division stayed the order and directed the trial court to

maintain possession of the tapes until an issue concerning their release arose at trial, at which point the defendant could attempt to make the necessary showing under the Shield Law. *Id.* At trial, the defendant again sought the tapes. *Id.* at 345. The trial court granted Hybrid’s motion to quash, holding that the defendant had not met his burden under the Shield Law. *Id.* The defendant was convicted of manslaughter and appealed. *Id.*

Ultimately, this Court reversed and ordered a new trial, relying on the specific and narrow circumstances present in the case, and holding that the defendant had overcome the Shield Law’s qualified privilege for nonconfidential information. *Id.* However, the *Combest* Court focused mainly on the first and third prongs of the Shield Law and never explicitly discussed the applicable standard for determining when information is “critical or necessary” under the Shield Law. *See id.* at 347–49. To the extent that the Court’s decision in *Combest* can be read to provide an interpretation of the “critical or necessary” prong, the standard the Court applied was high. In discussing the trial court’s error in concluding that the defendant “failed to make a clear and specific showing that the subpoenaed information was highly material and relevant, and critical or necessary to his defense,” the Court stated that “only the tapes could establish those intangibles that might properly be considered” by the jury in assessing the voluntariness of the defendant’s confession. *Id.* at 349. The Court also noted that

“Hybrid’s tapes constituted the only depictions of [the defendant’s] interrogation *by the police.*” *Id.* at 348 (emphasis added)). Thus, the tapes in *Combest* were not simply useful to defendant, but were absolutely essential to his defense that his confession was involuntary.

In addition, the unique facts of *Combest*—which are entirely unlike those at issue in the present case, or the typical reporter’s privilege case—took the Court down a different path. The Court wrote:

[T]he police may not immunize themselves from their obligation to provide defendants with copies of their own taped statements simply by letting a news organization—invited into the room by the police—operate the cameras. [The d]efendant correctly contends that the police here allowed the film company to perform what was in fact a police function—the memorialization of an otherwise private interrogation and admission—by videotaping it, thus possessing the only recording of the event.

Id. at 350. Moreover, the Court noted that “much of the difficulty could have been avoided here had the police themselves taped the entire interrogation,” *id.*, as well as the “increasing number of jurisdictions” that now mandate that police interrogations be recorded and “a resolution calling for all law enforcement agencies to videotape in their entirety the custodial interrogation of crime suspects” that had recently been adopted by the New York State and American Bar Associations. *Id.* at 350 n.5.

This case is distinguishable from *Combest*. Unlike Hybrid’s interview of the defendant in *Combest*, which simply memorialized the police’s interaction with the defendant, Robles’ interview of Juarez was entirely separate from his custodial interrogation by the police. *See id.* at 348 (noting that the tapes sought by the defendant in *Combest* “constituted the only depictions of [the defendant’s] interrogation *by the police*” (emphasis added)). As is typical between reporters and interview subjects, the interview was a private interaction between Robles and Juarez and reflects the journalistic decisions of Robles and her editors about what questions to ask, how to phrase the questions, and what information to publish. The policy concerns that appear to have animated the Court’s decision in *Combest* are not present here.

- C. A robust interpretation of the “critical or necessary” prong is necessary to effectuate the Shield Law’s purpose.

The purpose of the Shield Law is to protect the public’s ability to learn about important matters and events through the news media. *See* Section II, *supra*. If the Shield Law is to have the effect the Legislature intended, this Court must interpret its provisions strictly and with this legislative purpose in mind. The instances in which a reporter can be compelled to provide nonconfidential information must be rare, or the protections that the Shield Law’s qualified privilege for nonconfidential information affords will be meaningless.

The “virtually rises or falls” formulation of the “critical or necessary” prong provides the appropriate level of protection for these materials. Under that standard, material that is merely helpful, useful, or probative is not “critical or necessary” to the maintenance of a party’s claim, defense or proof of an issue. *See Graco*, 79 F.3d at 351 (stating that “‘critical or necessary’ as used in the [New York Shield Law] must mean something more than ‘useful,’ particularly since the first statutory factor requires that the material sought must be shown to be ‘highly material and relevant’ in any event”); *see also Matter of Grand Jury Subpoenas (Maguire)*, 161 Misc. 2d 960, 965 (Sup. Ct. N.Y. County 1994); *Doe v. Cummings*, 22 Media L. Rep. 1510, 1511 (Sup. Ct. St. Lawrence County 1994). Rather, the litigant seeking the information must show that the material sought is “*essential to the maintenance of the litigant’s claim.*” *O’Neill*, 71 N.Y.2d at 527 (emphasis added); *see also Matter of Perito v. Finklestein*, 51 A.D.3d 674, 675 (2d Dept. 2008) (stating that defendant seeking information must show that his or her defense “could not be presented without it”); *Doe*, 22 Media L. Rep. at 1511 (stating that the test is “whether or not the defense of the action may be presented without” the information sought by defendant); *cf. Matter of Grand Jury Subpoenas (NBC)*, 178 Misc. 2d at 1058 (holding that unbroadcast outtakes were “critical or necessary” because, without them, the government would be “totally unable to prosecute the assault cases” at issue).

Appellant’s formulation of the “critical and necessary” prong of the Shield Law would fatally weaken the qualified reporter’s privilege by excepting *all* statements by a criminal defendant from the scope of the privilege as a matter of law. Appellant argues that “it blinks reality to suppose that in any criminal case, and especially in a murder case, any and all statements made by the defendant pertaining to the crime are not fundamentally critical to the prosecution.” Br. for Appellant 39. If the Court were to adopt this standard for analyzing the “critical or necessary” prong, then it would be met in each and every case in which a reporter interviewed a criminal defendant about the crime of which he or she is accused, regardless of other available evidence.

This formulation is contrary to the purpose of the Shield Law, which was enacted, in part, because of specific concerns about compelling journalists to reveal nonconfidential information in criminal cases. *See* Governor’s Program Bill Mem., Bill Jacket, L. 1990, ch. 33, 1990 N.Y. Legis. Ann. at 11 (noting that reporters “encounter the *most* problematic incursions into the integrity of the editorial process when they are drawn into the criminal justice system merely because they have reported on a crime” (emphasis added)); Governor’s Approval Mem., Bill Jacket, L. 1990, ch. 33, 1990 N.Y. Legis. Ann. at 13 (stating that “journalists are all too often drawn into the criminal justice system because they have reported on a crime”). In keeping with this legislative intent, this Court

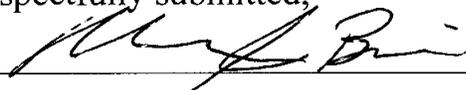
should interpret the Shield Law strictly and hold that information is “critical or necessary” only when a litigant’s claim virtually rises or falls based on the information sought.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to affirm the decision of the Appellate Division, First Department, granting Robles’ motion to quash.

DATE: New York, New York
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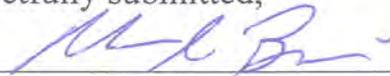
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CERTIFICATION

I certify pursuant to 500.13(c)(1) that the total word count for all printed text in the body of the brief, exclusive of the statement of the status of related litigation; the corporate disclosure statement; the table of contents, the table of cases and authorities and the statement of questions presented required by subsection (a) of this section; and any addendum containing material required by subsection 500.1(h) of this Part is 5,333 words.

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APPENDIX A

Descriptions of amici:

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

ALM Media, LLC publishes over 30 national and regional magazines and newspapers, including *The American Lawyer*, *The National Law Journal*, *New York Law Journal* and *Corporate Counsel*, as well as the website Law.com. Many of ALM's publications have long histories reporting on legal issues and serving their local legal communities. ALM's *The Recorder*, for example, has been published in northern California since 1877; *New York Law Journal* was begun a few years later, in 1888. ALM's publications have won numerous awards for their coverage of critical national and local legal stories, including many stories that have been later picked up by other national media.

American Broadcasting Companies, Inc., operates television and radio networks throughout the United States. Through its news divisions, it regularly gathers and reports news to the public. It owns ABC News, which produces the programs *World News Tonight with David Muir*, *Good Morning America*,

Nightline, 20/20 and This Week, among others. In New York, it owns the local television station WABC-TV, which gathers and reports news concerning New York, Connecticut and New Jersey.

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, and owned by its 1,500 U.S. newspaper members. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 300 locations in more than 100 countries. On any given day, AP’s content can reach more than half of the world’s population.

Association of Alternative Newsmedia (“AAN”) is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. 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.

The Association of American Publishers, Inc. (“AAP”) is the national trade association of the U.S. book publishing industry. AAP’s members include most of the major commercial book publishers in the United States, as well as smaller and nonprofit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary and professional markets, scholarly journals, computer software and electronic products and services. The Association represents an industry whose very existence depends upon the free exercise of rights guaranteed by the First Amendment.

Bloomberg L.P. operates Bloomberg News, a 24-hour global news service based in New York with more than 2,400 journalists in more than 150 bureaus around the world. Bloomberg supplies real-time business, financial, and legal news to the more than 319,000 subscribers to the Bloomberg Professional service worldwide and is syndicated to more than 1000 media outlets across more than 60 countries. Bloomberg television is available in more than 340 million homes worldwide and Bloomberg radio is syndicated to 200 radio affiliates nationally. In addition, Bloomberg publishes Bloomberg Businessweek, Bloomberg Markets and

Bloomberg Pursuits magazines with a combined circulation of 1.4 million readers and Bloomberg.com and Businessweek.com receive more than 24 million visitors each month. In total, Bloomberg distributes news, information, and commentary to millions of readers and listeners each day, and has published more than one hundred million stories.

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

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

The Center for Investigative Reporting (CIR) believes journalism that moves citizens to action is an essential pillar of democracy. Since 1977, CIR has relentlessly pursued and revealed injustices that otherwise would remain hidden from the public eye. Today, we're upholding this legacy and looking forward, working at the forefront of journalistic innovation to produce important stories that make a difference and engage you, our audience, across the aisle, coast to coast and worldwide.

The Committee to Protect Journalists is an independent, nonprofit organization that promotes press freedom worldwide. We defend the right of journalists to report the news without fear of reprisal. CPJ is made up of about 40

experts around the world, with headquarters in New York City. A board of prominent journalists from around the world helps guide CPJ's activities.

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.

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

Dow Jones & Company, Inc., 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. 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.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

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

Fox News Network LLC ("Fox News") owns and operates the Fox News Channel, the top rated 24/7 all news national cable channel, and the Fox Business Network, as well as Foxnews.com, Foxbusiness.com, and the Fox News Radio Network.

Freedom of the Press Foundation is a non-profit organization that supports and defends public-interest journalism focused on transparency and accountability. The organization works to preserve and strengthen First and Fourth Amendment rights guaranteed to the press through a variety of avenues, including public advocacy, legal advocacy, the promotion of digital security tools, and crowd-funding.

Gannett Co., Inc. is an international news and information company that publishes 109 daily newspapers in the United States and Guam, including USA TODAY. Each weekday, Gannett's newspapers are distributed to an audience of more than 8 million readers and the digital and mobile products associated with the company's publications serve online content to more than 100 million unique visitors each month.

GateHouse Media is a preeminent provider of print and digital local content and advertising in small and midsize markets. Our portfolio of products, which includes 404 community publications and more than 350 related websites and six yellow page directories, serves over 128,000 business advertising accounts and reaches approximately 10 million people on a weekly basis.

Hearst is one of the nation's largest diversified media, information and services companies with more than 360 businesses. Its major interests include ownership in cable television networks such as A&E, HISTORY, Lifetime and

ESPN; majority ownership of global ratings agency Fitch Group; Hearst Health, a group of medical information and services businesses; 30 television stations such as WCVB-TV in Boston and KCRA-TV in Sacramento, Calif., which reach a combined 19 percent of U.S. viewers; newspapers such as the Houston Chronicle, San Francisco Chronicle and Albany Times Union, more than 300 magazines around the world including Cosmopolitan, ELLE, Harper's BAZAAR and Car and Driver; digital services businesses such as iCrossing and KUBRA; and investments in emerging digital and video companies such as Complex, BuzzFeed, VICE and AwesomenessTV.

The Inter American Press Association (IAPA) is a not-for-profit organization dedicated to the defense and promotion of freedom of the press and of expression in the Americas. It is made up of more than 1,300 publications from throughout the Western Hemisphere and is based in Miami, Florida.

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.

The International Press Institute is a global network of editors, media executives and leading journalists dedicated to the furtherance and safeguarding of press freedom, the protection of freedom of opinion and expression, the promotion

of the free flow of news and information, and the improvement of the practices of journalism. Headquartered in Vienna, Austria, it was founded at Columbia University in New York in 1950.

The International Press Institute North American Committee is a national committee of IPI, a global network of editors, media executives and leading journalists dedicated to the furtherance and safeguarding of press freedom, the protection of freedom of opinion and expression, the promotion of the free flow of news and information, and the improvement of the practices of journalism. Headquartered in Vienna, Austria, it was founded at Columbia University in New York in 1950.

Investigative Reporters and Editors, Inc. is a grassroots nonprofit organization dedicated to improving the quality of investigative reporting. IRE was formed in 1975 to create a forum in which journalists throughout the world could help each other by sharing story ideas, newsgathering techniques and news sources.

The Investigative Reporting Program (IRP) at UC Berkeley's Graduate School of Journalism is dedicated to promoting and protecting the practice of investigative reporting. Evolving from a single seminar, the IRP now encompasses a nonprofit newsroom, a seminar for undergraduate reporters and a post-graduate fellowship program, among other initiatives. Through its various projects, students

have opportunities to gain mentorship and practical experience in breaking major stories for some of the nation's foremost print and broadcast outlets. The IRP also works closely with students to develop and publish their own investigative pieces. The IRP's work has appeared on PBS Frontline, Univision, Frontline/WORLD, NPR and PBS NewsHour and in publications such as Mother Jones, The New York Times, Los Angeles Times, Time magazine and the San Francisco Chronicle, among others.

The Investigative Reporting Workshop, a project of the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

The Media Consortium is a network of the country's leading, progressive, independent media outlets. Our mission is to amplify independent media's voice, increase our collective clout, leverage our current audience and reach new ones.

The Miami Herald is a daily newspaper published by the McClatchy Company.

MPA – The Association of Magazine Media, (“MPA”) is the largest industry association for magazine publishers. The MPA, established in 1919,

represents over 175 domestic magazine media companies with more than 900 magazine titles. The MPA represents the interests of weekly, monthly and quarterly publications that produce titles on topics that cover politics, religion, sports, industry, and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues. National Newspaper Association is a 2,400 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Springfield, Illinois.

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

The National Press Photographers Association ("NPPA") is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA's approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism.

The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

The Native American Journalists Association (NAJA) empowers journalists through the provision of resources to Native and non-Native media. NAJA represents more than 500 members working in national and tribal media outlets, independent freelancers, associations, academic institutions and other organizations. Through programs that promote diversity and defend challenges to free press, speech and expression, NAJA promotes accurate media coverage of Indian Country. NAJA is committed to increasing the representation of Native journalists in mainstream media. NAJA encourages both mainstream and tribal media to attain the highest standards of professionalism, ethics and responsibility.

NBCUniversal Media, LLC is one of the world's leading media and entertainment companies in the development, production and marketing of news, entertainment and information to a global audience. Among other businesses, NBCUniversal Media, LLC owns and operates the NBC television network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks, including MSNBC and CNBC, and a television-stations group consisting of owned-and-operated television stations that produce substantial amounts of local news, sports and public affairs programming. NBC News

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

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 News Guild – CWA is a labor organization representing more than 30,000 employees of newspapers, newsmagazines, news services and related media enterprises. The News Guild – CWA has six affiliated Guild locals based in New York. Guild representation comprises, in the main, the advertising, business, circulation, editorial, maintenance and related departments of these media outlets.

The News Guild is a sector of the Communications Workers of America. CWA is America's largest communications and media union, representing over 700,000 men and women in both private and public sectors.

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

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

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.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper *The Seattle Times*, together with *The Issaquah Press*, *Yakima Herald-Republic*, *Walla Walla Union-Bulletin*, *Sammamish Review* and *Newcastle-News*, all in Washington state.

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.

tronc, Inc. is one of the country’s leading media companies. The company’s leading daily newspapers include the *Los Angeles Times*, *Chicago Tribune*, *New York Daily News*, *San Diego Union-Tribune*, *The Baltimore Sun*, *Sun Sentinel* (South Florida), *Orlando Sentinel*, *Hartford Courant*, *The Morning Call* and *Daily*

Press. Popular news and information websites, including www.chicagotribune.com and www.latimes.com, complement tronc'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.

WP Company LLC publishes **The Washington Post**, the leading daily newspaper in the nation's capital, as well as the website www.washingtonpost.com, which reaches more than 65 million unique visitors per month.

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