

16-1335

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

DAN FRIEDMAN,
Plaintiff-Appellee,

v.

BLOOMBERG L.P., CHRISTOPHER DOLMETSCH, ERIC LARSEN, MICHAEL HYTHA, ANDREW DUNN,
MILLTOWN PARTNERS, PATRICK HARVERSEN, D.J. COLLINS, OLIVER RICKMAN, PALLADYNE
INTERNATIONAL ASSET MANAGEMENT B.V., ISMAEL ABUDHER, LILY YEO,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Connecticut

**MOTION OF THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS AND 22 MEDIA ORGANIZATIONS
FOR LEAVE TO FILE AN *AMICUS* BRIEF**

Bruce D. Brown
Counsel of Record for Amici Curiae
Gregg P. Leslie
Sarah Staveley Matthews
Caitlin Vogus
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW, Ste. 1250
Washington, D.C. 20005
(202) 795-9300

The Reporters Committee for Freedom of the Press, ALM Media, LLC, American Society of News Editors, The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia, Dow Jones & Company, Inc., The E.W. Scripps Company, Freedom of the Press Foundation, Gannett Co., Inc., Investigative Reporting Workshop at American University, MPA – The Association of Magazine Media, National Newspaper Association, National Press Photographers Association, The New York Times Company, News Media Alliance, Newsday LLC, Reporters Without Borders, Sinclair Broadcast Group, Inc., Society of Professional Journalists, tronc, Inc., Tully Center for Free Speech, and VICE Media (collectively, “*amici*”) move for leave to file the attached *amicus* brief in support of defendants-appellees Bloomberg L.P. and its editors and reporters Christopher Dolmetsch, Erik Larsen, Michael Hytha, and Andrew Dunn (collectively, the “Bloomberg Defendants”) pursuant to Federal Rule of Appellate Procedure 29(b)(2). The Bloomberg Defendants consented to the filing of this *amicus* brief. Plaintiff-appellant Dan Friedman did not.

A motion for leave to file an *amicus* brief “must be accompanied by the proposed brief and state: (A) the movant’s interest; and (B) the reason why an *amicus* brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. Proc. 29(a)(3) & (b)(3). *Amici*’s proposed brief is included as Attachment 1.

As representatives and members of the news media, *amici* have a strong interest in upholding press freedoms. The issue presented in the Bloomberg Defendants' petition for rehearing is whether the privilege for fair and true reports of judicial proceedings under New York Civil Rights Law § 74 applies to reporting on a defendant's comments about a litigation before that defendant has filed a responsive pleading. The Court's resolution of this issue will significantly affect the journalists on whose behalf *amici* advocate. They regularly report on cases pending before state and federal courts and depend on the protections of the fair report privilege in order to disseminate news to the public.

This *amicus* brief should aid the Court because it sheds light on significant policy concerns that have not been addressed by the parties but that warrant consideration in this case. *Amici* discuss one key practical effect of allowing the district court's decision to stand: the public will be denied information about the workings of the judicial system because journalists will not be able to safely report on a defendant's response to a newly-filed case due to the threat of libel litigation for republishing those comments. In the absence of reversal by this Court, news organizations will be placed in an untenable situation in which they must choose between (1) doing their jobs and providing full and fair reporting on newly-filed lawsuits but risking costly litigation, and (2) omitting a defendant's newsworthy but possibly defamatory comments, thereby avoiding litigation risk but keeping the

public in the dark about a defendant's position and undermining the news organization's credibility. The pressure to avoid the threat of a libel suit will inevitably have a chilling effect on news coverage of cases, leading to one-sided reporting that gives an unfair advantage to plaintiffs and deprives the public of critical information necessary to make informed judgments with respect to public controversies.

The *amicus* brief also explains why, in the modern era of 24-hour news cycles, denying journalists the ability to include a defendant's response to a newly-filed complaint threatens to stifle free speech and public debate at the very moment complaints are most newsworthy. If a journalist can only report the defendant's position weeks (if not years, as in this case) after an original article was published, the story may have lost its newsworthiness, news organizations may have moved on, and the public may never learn more about the merits of the lawsuit at issue.

For these reasons, *amici* respectfully request leave to file the attached *amicus* brief in support of the Bloomberg Defendants.

Dated: October 3, 2017

Respectfully submitted,

/s/ Bruce D. Brown

Bruce D. Brown

Gregg P. Leslie

Sarah Staveley Matthews

Caitlin Vogus

THE REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th Street NW, Ste. 1250

Washington, D.C. 20005

(202) 795-9300

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on October 3, 2017.

Dated: October 3, 2017

By: /s/ Bruce D. Brown
Bruce D. Brown
Counsel for Amici Curiae

ATTACHMENT 1

16-1335

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

DAN FRIEDMAN,
Plaintiff-Appellee,

v.

BLOOMBERG L.P., CHRISTOPHER DOLMETSCH, ERIK LARSEN, MICHAEL HYTHA, ANDREW DUNN,
MILLTOWN PARTNERS, PATRICK HARVERSEN, D.J. COLLINS, OLIVER RICKMAN, PALLADYNE
INTERNATIONAL ASSET MANAGEMENT B.V., ISMAEL ABUDHER, LILY YEO,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Connecticut

**BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS AND 22 MEDIA ORGANIZATIONS
IN SUPPORT OF THE BLOOMBERG DEFENDANTS-APPELLEES'
PETITION FOR REHEARING**

Bruce D. Brown
Counsel of Record for Amici Curiae
Gregg P. Leslie
Sarah Staveley Matthews
Caitlin Vogus
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW, Ste. 1250
Washington, D.C. 20005
(202) 795-9300

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amici curiae* certify that:

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

ALM Media, LLC is privately owned, and no publicly held corporation owns 10 percent or more of its stock.

American Society of News Editors is a private, non-stock corporation that has no parent.

The Associated Press is a global news agency organized as a mutual news cooperative under the New York Not-For-Profit Corporation law. It is not publicly traded.

The Associated Press Media Editors has no parent corporation and does not issue any stock.

Association of Alternative Newsmedia has no parent corporation and does not issue any stock.

Dow Jones is a Delaware corporation with its principal place of business in New York. 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 percent or more of the stock of Dow Jones.

The E.W. Scripps Company is a publicly traded company with no parent company. No individual stockholder owns more than 10 percent of its stock.

Freedom of the Press Foundation does not have a parent corporation, and no publicly held corporation owns 10 percent or more of the stock of the organization.

Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company holds 10 percent or more of its stock.

The Investigative Reporting Workshop is a privately funded, nonprofit news organization affiliated with the American University School of Communication in Washington. It issues no stock.

MPA – The Association of Magazine Media has no parent companies, and no publicly held company owns more than 10 percent of its stock.

National Newspaper Association is a non-stock nonprofit Missouri corporation. It has no parent corporation and no subsidiaries.

National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock.

The New York Times Company is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company owns 10 percent or more of its stock.

News Media Alliance is a nonprofit, non-stock corporation organized under the laws of the commonwealth of Virginia. It has no parent company.

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, which is indirectly owned by Altice N.V., a Netherlands public company (which holds a majority interest); Canada Pension Plan Investment Board, a Canadian Crown corporation; and BC Partners, a U.K. private equity firm.

Reporters Without Borders is a nonprofit association with no parent corporation.

Sinclair Broadcast Group, Inc. is a Maryland corporation, which is publicly traded on NASDAQ under the symbol SBGI.

Society of Professional Journalists is a non-stock corporation with no parent company.

Tronc, Inc. is a publicly held corporation. Merrick Venture Management Holdings, LLC, California Capital Equity, LLC, and PRIMECAP Management Company each own 10 percent or more of tronc, Inc.'s stock.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

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 percent or more of Vice Group Holding Inc.'s stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	vi
STATEMENT OF IDENTITY AND INTEREST OF <i>AMICI CURIAE</i>	vii
SOURCE OF AUTHORITY TO FILE.....	viii
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. Journalists must be able to safely report on a defendant’s comments to a newly-filed lawsuit in order to provide full and fair information on public controversies.....	3
II. Journalists must be able to report promptly on a defendant’s response to a newly-filed lawsuit.....	7
CONCLUSION.....	8
EXHIBIT A: DESCRIPTION OF <i>AMICI</i>	11
EXHIBIT B: ADDITIONAL COUNSEL	16

TABLE OF AUTHORITIES

CASES

<i>Barry v. Time, Inc.</i> , 584 F. Supp. 1110 (N.D. Cal. 1984).....	3, 7
<i>Edwards v. Nat’l Audubon Soc’y</i> , 556 F.2d 113 (2d Cir. 1977).....	2, 5, 6
<i>Friedman v. Bloomberg L.P.</i> , -- F.3d --, 2017 WL 3995825 (2d Cir. Sept. 12, 2017)	1, 2
<i>Friedman v. Bloomberg LP</i> , 180 F. Supp. 3d 137 (D. Conn. 2016).....	2
<i>Grove Fresh Distribs., Inc. v. Everfresh Juice Co.</i> , 24 F.3d 893 (7th Cir. 1994).....	8
<i>N.Y. Times Co. v. Sullivan</i> , 376 U.S. 254 (1964).....	5
<i>Salzano v. N.J. Media Grp.</i> , 993 A.2d 778 (N.J. 2010).....	5
<i>Silver v. Kuehbeck</i> , 217 F. App’x 18 (2d Cir. 2007)	6
<i>Wenz v. Becker</i> , 948 F. Supp. 319 (S.D.N.Y. 1996).....	6

OTHER AUTHORITIES

1 Robert D. Sack, <i>Sack on Defamation</i> § 7:3.5[B][2]	5, 6
Christopher J. Davey, <i>The Future of Online Legal Journalism: The Courts Speak Only Through Their Opinions?</i> , 8 I/S J.L. & Pol’y for the Info. Soc’y 575 (2013)	8
Toni Locy, <i>Covering America’s Courts: A Clash of Rights</i> (2013)	4, 7

RULES

Fed. R. App. Proc. 29(a)(4)(E)	vii
Fed. R. App. Proc. 29(b)(2)	viii
Local Rule 29.1(b)	vii
N.Y. Civil Rights Law § 74 (McKinney 2017)	<i>passim</i>

STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici Curiae are the Reporters Committee for Freedom of the Press, ALM Media, LLC, American Society of News Editors, The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia, Dow Jones & Company, Inc., The E.W. Scripps Company, Freedom of the Press Foundation, Gannett Co., Inc., Investigative Reporting Workshop at American University, MPA – The Association of Magazine Media, National Newspaper Association, National Press Photographers Association, The New York Times Company, News Media Alliance, Newsday LLC, Reporters Without Borders, Sinclair Broadcast Group, Inc., Society of Professional Journalists, tronc, Inc., Tully Center for Free Speech, and VICE Media (collectively, “*amici*”). A supplemental statement of identity and interest of *amici* is included below as Exhibit A, and a list of additional counsel is included below as Exhibit B.¹

As representatives and members of the news media, *amici* have a strong interest in protecting press freedoms. The issue presented in the Bloomberg Defendants’ petition for rehearing concerns the scope of the privilege for fair and

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E) and Local Rule 29.1(b), *amici* state as follows: (1) no party’s counsel authored this brief in whole or in part; (2) no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief; and (3) no person—other than the *amici curiae*, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief.

true reports of judicial proceedings under New York Civil Rights Law § 74. The Court's resolution of this issue will significantly affect the journalists on whose behalf *amici* advocate. They regularly report on cases pending before state and federal courts and depend on the protections of the fair report privilege in order to disseminate news to the public. Failure to recognize the proper scope of this privilege would stifle their ability to provide full and fair reporting on newly-filed complaints, because they could face liability for merely republishing a defendant's newsworthy but potentially defamatory comments.

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(b)(2)

INTRODUCTION AND SUMMARY OF ARGUMENT

At issue is whether a journalist must wait until a defendant files a formal responsive pleading before the privilege for fair and true reports of judicial proceedings under New York Civil Rights Law § 74 (“Section 74”) protects reporting on the defendant’s comments with respect to a newly-filed lawsuit.²

Plaintiff-appellant Dan Friedman brought libel claims against the defendants-appellees Bloomberg L.P. and its editors and reporters Christopher Dolmetsch, Erik Larsen, Michael Hytha, and Andrew Dunn (collectively, the “Bloomberg Defendants”) for publishing an article about a lawsuit Friedman had, at the time, just filed against his former employer. The article included the employer’s allegedly defamatory comments to the reporter in response to Friedman’s allegations.³ *Id.* The District of Connecticut (the “District Court”) granted the Bloomberg Defendants’ motion to dismiss, and this Court affirmed in part and reversed in part. *Id.* The Bloomberg Defendants then petitioned for rehearing to urge the Court to affirm dismissal of the last remaining libel claim on

² Section 74 provides in relevant part that a civil action “cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding”

³ Friedman’s lawsuit alleged, among other things, that his former employer, a Dutch hedge fund, was a “kickback and money laundering operation for the former dictatorial Ghaddafi [*sic*] regime in Libya.” *Friedman v. Bloomberg L.P.*, -- F.3d --, 2017 WL 3995825 at *1 (2d Cir. Sept. 12, 2017) (internal quotation marks and citation omitted).

a separate basis not addressed in the Court's opinion: that the fair report privilege under Section 74 protects their republication of the employer's statement ("These entirely untrue and ludicrous allegations have been made by a former employee who has repeatedly tried to extort money from the company."). Dkt. No. 123 at 2. The District Court had rejected this argument but dismissed the claim on other grounds, as non-actionable rhetorical hyperbole, a decision that this Court reversed. *Friedman*, 2017 WL 3995825 at *6–8. The District Court interpreted the fair report privilege to exclude reporting on a defendant's comments *unless and until* the defendant files a responsive pleading endorsing that position. *Friedman v. Bloomberg LP*, 180 F. Supp. 3d 137, 152 (D. Conn. 2016).

Amici write to support the Bloomberg Defendants' petition and to raise additional reasons why the Court should not allow the District Court's narrow interpretation of Section 74 to stand. As this Court has long recognized: "The public interest in being fully informed about controversies that often rage around sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them." *Edwards v. Nat'l Audubon Soc'y*, 556 F.2d 113, 120 (2d Cir. 1977). The District Court's approach conflicts with this fundamental principle by subjecting the press to liability simply for reporting on a defendant's response to a newly-filed action. If, at the time of publication, a news organization may be held liable for republishing a defendant's

newsworthy but defamatory comments, that organization will likely decline to publish those comments to avoid the specter of costly libel litigation. The District Court's approach will thus have a chilling effect on the news media, discourage fair and ethical reporting, and keep the public in the dark on matters of public importance at a critical time: just after a complaint has been filed and the defendant's position is most newsworthy.

For these reasons and those set forth in the Bloomberg Defendants' petition, *amici* respectfully urge this Court to grant the petition for rehearing and reverse the District Court's order on this issue or, alternatively, to certify the question to the New York Court of Appeals.

ARGUMENT

I. Journalists must be able to safely report on a defendant's comments to a newly-filed lawsuit in order to provide full and fair information on public controversies.

The District Court's interpretation of Section 74 will hamstring the news media's ability to report on cases and deprive the public of critical information necessary "to make informed judgments with respect to public controversies." *Barry v. Time, Inc.*, 584 F. Supp. 1110, 1125 (N.D. Cal. 1984). For example, if a plaintiff files a lawsuit against a political candidate just before an election, and the candidate objects with comments that could be seen as defamatory of the plaintiff, a journalist and her publisher face a dilemma: report on a newsworthy statement

and risk liability as republishers or ignore the statement, withhold information from the public, and undermine the credibility of the press. As this hypothetical demonstrates, several negative consequences will flow from putting news outlets in this untenable situation.

As an initial matter, it will incentivize poor journalistic practices; publishers will be pressured to only tell one side of a story, even though they are professionally trained to do the opposite. As veteran court reporter and professor Toni Locy explains:

A civil lawsuit provides one side's version of a dispute between two parties. It is important to remember that a lawsuit, like an indictment, contains allegations that have not been proven. Unlike an indictment, where a grand jury theoretically acts as a check on a prosecutor, no one reviews a lawsuit's allegations; and a complaint . . . can be initiated by anyone who can pay the court's nominal filing fee. This is why reporters must do their best to get a comment from the other side when writing about a newly filed lawsuit. . . . [Despite an attorney's attempts to ignore the press,] [k]eep trying to get a comment. At least you'll know you did everything you could to be fair.

Toni Locy, *Covering America's Courts: A Clash of Rights* 63 (2013) (internal italics omitted).

More importantly, since the press will not be able to paint a complete picture of high-profile litigations, the public will ultimately be robbed of the opportunity to engage in meaningful debate and, in some cases, perhaps even participate with full information in the electoral process. See 1 Robert D. Sack, *Sack on Defamation* §

7:3.5[B][2]. Surely this result cannot square with the long-standing principle that “debate on public issues should be uninhibited, robust, and wide-open.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). As this Court has long recognized: “In a society which takes seriously the principle that government rests upon the consent of the governed, freedom of the press must be the most cherished tenet.” *Edwards*, 556 F.2d at 115. “It is elementary that a democracy cannot long survive unless the people are provided the information needed to form judgments on issues that affect their ability to intelligently govern themselves.” *Id.*

Indeed, one of the key principles underlying the fair report privilege is to enable “citizens to learn, from whatever source, about important matters generally and about the operations of their courts and other governmental agencies, specifically, without imposing a risk upon those who bring the information to them.” *Sack*, *supra* § 7:3.5[B][2] (collecting cases, internal quotation marks omitted). This privilege “reflects the judgment that the need, in a self-governing society, for free-flowing information about matters of public interest outweighs concerns over the uncompensated injury to a person’s reputation.” *Id.* at n.86 (quoting *Salzano v. N.J. Media Grp.*, 993 A.2d 778, 786 (N.J. 2010)). Protecting the press in this way encourages greater public understanding and more informed debate about the legal system and the adjudication of controversies within the

courts. Given the paramount importance of these goals, jurisdictions around the country have interpreted the fair report privilege broadly. *See id.* at nn.87–89.

Moreover, a defendant's response to newly-filed claims is itself news, so a news organization must be able to safely report it. *Cf. Edwards*, 556 F.2d at 120 (First Amendment protected newspaper's republication of National Audubon Society's accusations against a public figure because, regardless of whether accusations were true, mere fact that they were made was newsworthy). That the defendant is responding in the context of litigation signals to the reader that the parties dispute the facts. Readers certainly would not expect the journalist, who is merely republishing the defendant's statement, to be in a position to verify the truth of the allegations, as this is the very subject matter of the legal dispute.

Accordingly, to protect the press and promote an informed and robust debate on public issues and controversies, the fair report privilege must be interpreted to attach once an action has commenced and then cover all litigants' statements made in connection with that proceeding. *See, e.g., Silver v. Kuehbeck*, 217 F. App'x 18, 23 (2d Cir. 2007) (fair report privilege under Section 74 applied to attorney's comments in newspaper article about litigation against his clients, even though they had not filed an answer); *Wenz v. Becker*, 948 F. Supp. 319, 323 (S.D.N.Y. 1996) (Section 74 privilege protected defendant's statement to a reporter, even though defendant had not yet filed formal pleadings, because privilege applied to

“any judicial proceeding” and a “judicial action is commenced by the filing of a complaint . . . or by the service of a summons upon a defendant”); *cf. Barry*, 584 F. Supp. at 1126 (advocating protection of “*all* republications of serious charges made by one participant in an existing public controversy against another participant in that controversy,” because this approach “is more consistent with providing the public with ‘full information’ about public controversies”). To do otherwise would endanger the public’s ability to learn about newly-filed cases.

II. Journalists must be able to report promptly on a defendant’s response to a newly-filed lawsuit.

In this age of electronic dockets and 24-hour news cycles, the public demands timely information, and journalists face enormous deadline pressure to report on lawsuits the day they are filed. *See, e.g., Locy, supra* at 13 (“In the Internet age, a deadline passes every second.”). The proper scope of Section 74 is thus particularly important when proceedings have just begun, so that journalists can safely report on a defendant’s immediate reactions to a lawsuit, and the public receives a fuller understanding of the legal dispute without delay.

Indeed, timeliness is a hallmark of newsworthiness. The ability to include a defendant’s response to a newly-filed lawsuit makes reporting more accurate, fair, and complete. Delay has consequences. If a journalist can report on the defendant’s position only weeks, months, or even years after the original story was published, the public may never learn what that position was, particularly if at that

point it is no longer newsworthy. *See Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (“The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.”).

Denying journalists the ability to include a defendant’s response to a newly-filed complaint thus threatens to stifle free speech and public debate at the moment complaints are most newsworthy. As the volume of regular news coverage of lower courts shrinks, *see* Christopher J. Davey, *The Future of Online Legal Journalism: The Courts Speak Only Through Their Opinions?*, 8 I/S J.L. & Pol’y for the Info. Soc’y 575, 585 (2013), Bloomberg and other media organizations that cover these courts provide an increasingly valuable service to the public. Unnecessary delays in including a defendant’s litigation position imperil that service.

CONCLUSION

For the foregoing reasons and those set forth in the Bloomberg Defendants’ petition, *amici* urge this Court to grant rehearing, reverse the District Court’s order, and recognize the proper breadth of the fair report privilege under Section 74 or, alternatively, to certify the issue to the New York Court of Appeals.

Dated: October 3, 2017

Respectfully submitted,

/s/ Bruce D. Brown

Bruce D. Brown

Gregg Leslie

Sarah Staveley Matthews

Caitlin Vogus

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th Street NW, Ste. 1250

Washington, D.C. 20005

(202) 795-9300

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(b)(4) because this brief contains 1,932 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface and type style requirements of Federal Rules of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word for Mac in 14-point, Times New Roman font.

Dated: October 3, 2017

By: */s/ Bruce D. Brown*

Bruce D. Brown

Counsel for Amici Curiae

EXHIBIT A: DESCRIPTION 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.

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.

The Associated Press Media Editors ("APME") 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 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.

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.

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.

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.

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

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

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 percent 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.

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.

Sinclair is one of the largest and most diversified television broadcasting companies in the country. Pro forma for all pending and previously announced transactions (before any related divestitures), the Company will own, operate and/or provide services to 233 television stations in 108 markets. The Company has multiple emerging networks as well as being affiliated with all the major networks. Sinclair is a leading local news provider in the country and a producer of live sports content. Sinclair’s content is delivered via multiple platforms, including over-the-air, multi-channel video programming distributors, and digital platforms.

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.

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 B: ADDITIONAL COUNSEL

Dana Rosen
Senior V.P. & General Counsel
ALM Media, LLC
120 Broadway, 5th Floor
New York, NY 10271

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

Karen Kaiser
General Counsel
The Associated Press
450 W. 33rd Street
New York, NY 10001

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

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

Marcia Hofmann
Counsel for Freedom of the Press
Foundation
25 Taylor Street
San Francisco, CA 94012

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

James Cregan
Executive Vice President
MPA – The Association of Magazine
Media
1211 Connecticut Ave. NW Suite 610
Washington, DC 20036

Tonda F. Rush
Counsel to National Newspaper
Association
CNLC, LLC
200 Little Falls Street, Suite 405
Falls Church, VA 22046
(703) 237-9801
tonda@nna.org

Mickey H. Osterreicher
1100 M&T Center, 3 Fountain Plaza,
Buffalo, NY 14203
Counsel for National Press
Photographers Association

David McCraw
V.P./Assistant General Counsel
The New York Times Company
620 Eighth Avenue
New York, NY 10018

Kurt Wimmer
Covington & Burling LLP
850 10th Street NW
Washington, DC 20001
Counsel for the News Media Alliance

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

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

Jon Lutzky
General Counsel
VICE Media
49 South 2nd Street
Brooklyn, NY 11249
718-215-5700

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on October 3, 2017.

Dated: October 3, 2017

By: */s/ Bruce D. Brown*

Bruce D. Brown

Counsel for Amici Curiae