

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

BUFFALO POLICE BENEVOLENT
ASSOCIATION, INC.;
and BUFFALO PROFESSIONAL
FIREFIGHTERS ASSOCIATION, INC.,
LOCAL 282, IAFF, AFL-CIO,

Petitioners/Plaintiffs,

vs.

BYRON W. BROWN, in his official capacity
as Mayor of the City of Buffalo; the CITY OF
BUFFALO; BYRON C. LOCKWOOD, in his
official capacity as Commissioner of the
Buffalo Police Department; the BUFFALO
POLICE DEPARTMENT; WILLIAM
RENALDO, in his official capacity as
Commissioner of the Buffalo Fire Department;
and the BUFFALO FIRE DEPARTMENT,

Respondents/Defendants.

INDEX NO. 807664/2020

Hon. Frank A Sedita, III

**[PROPOSED] BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS AND 26 MEDIA ORGANIZATIONS
IN OPPOSITION TO PETITIONERS/PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

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INTEREST OF AMICI CURIAE¹

Amici curiae are the Reporters Committee for Freedom of the Press (“Reporters Committee”), The Associated Press, The Buffalo News, BuzzFeed, The E.W. Scripps Company/WKBW-TV, Freedom of the Press Foundation, Fox Televisions Stations, LLC, Gannett Co., Inc., International Documentary Assn., Investigative Post, Mother Jones, National Freedom of Information Coalition, National Newspaper Association, National Press Club Journalism Institute, The National Press Club, National Press Photographers Association, New York News Publishers Association, New York Public Radio, The New York Times Company, The News Leaders Association, News Media Alliance, Nexstar Broadcasting, Inc./WIVB and WNLO, Penguin Random House LLC, Sinclair Broadcast Group, Inc., Society of Environmental Journalists, Society of Professional Journalists, and TEGNA Inc./WGRZ-TV (Buffalo).

Lead amicus the Reporters Committee is an unincorporated nonprofit association, founded by leading journalists and media lawyers in 1970, when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.²

Amici and the reporters and news outlets whose interests they represent rely on access to information about the conduct of government agencies and officials—including police officers—to report on matters of public concern. Meaningful, timely access to records of police misconduct, like those at issue in this case, enable members of the press to fulfill their

¹ No party’s counsel authored this brief in whole or in part, and no party, party’s counsel, or any person other than amici curiae or their counsel contributed money that was intended to fund preparing or submitting this brief. Counsel for Petitioners does not consent to the filing of this brief; counsel for Respondents does not oppose the filing of this brief.

² Full descriptions of the other amici are included below as Appendix A.

constitutionally recognized role to gather and report newsworthy information about the activities of government. As such, amici have a strong interest in this case. Following the recent repeal of New York Civil Rights Law Section 50-a (“Section 50-a”), amici have sought to obtain, analyze, and report on critical information about the actions of law enforcement personnel that have long been hidden from public view, thereby fulfilling the press’s role as a conduit for public access to important information about government action.

INTRODUCTION

Amici respectfully submit this brief in opposition to the motion of Petitioners/Plaintiffs (“Petitioners”) for a preliminary injunction which, if granted, would further delay public access to long-hidden information about the conduct of law enforcement officers in New York. The public and the press depend upon the free flow of information from government agencies and officials, like Respondents/Defendants (“Respondents”), in order to keep a watchful eye on the actions of government, including the operation of the criminal justice system—to which the records at issue in this proceeding will provide long-absent illumination. Indeed, as New York’s Freedom of Information Law, N.Y. Pub. Off. Law §§ 84 *et seq.* (“FOIL”) states, “government is the public’s business,” and “the public, individually and collectively and represented by a free press should have access to records of the government.” Such is particularly the case here, where the repeal of Section 50-a has finally removed a barrier to access which law enforcement agencies historically relied on in order to shield records of misconduct from public view. Amici seek to highlight the importance and urgency of public access to such information, and thus, respectfully urge the Court to deny Petitioners’ motion for a preliminary injunction.

ARGUMENT

I. The Court should deny Petitioners' request for a preliminary injunction.

- A. A preliminary injunction would be directly contrary to the Legislature's intent in repealing Section 50-a.

Petitioners assert in support of their motion for a preliminary injunction that “the balance of equities in this case militates strongly in favor of granting emergency injunctive relief to preserve the status quo.” Mem. of Law in Supp. of Verified Pet./Compl. and Proposed Order to Show Cause Seeking TRO and Prelim. Inj. (“Pet’rs’ Mem.”), Dkt. No. 7, at 17. This claim ignores the fact that the New York Legislature has unequivocally, and over Petitioners’ objections, overwhelmingly decided to permit public release of the records at issue. Under FOIL, the status quo is not blanket confidentiality of records, but rather the presumption that government records are disclosable, and may be subject to withholding only subject to certain narrow, specific exemptions. *See Friedman v. Rice*, 30 N.Y.3d 461, 481 (N.Y. Ct. App. 2017) (rejecting a “blanket” or categorical exemption to records under FOIL as violative of the “legislature’s policy of broad public access”). As the Court of Appeals has explained,

To promote open government and public accountability, the FOIL imposes a broad duty on government to make its records available to the public All government records are thus presumptively open for public inspection and copying unless they fall within one of the enumerated exemptions of Public Officers Law § 87(2). To ensure maximum access to government documents, the “exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption.”

Gould v. N.Y. City Police Dep’t, 89 N.Y.2d 267, 274–75 (N.Y. Ct. App. 1996).

On June 12, 2020, New York Governor Andrew Cuomo signed into law Assembly Bill A10611, which repealed Section 50-a. S. Assemb. B. A10611 (N.Y. 2020); *see also* Luis Ferré-Sadurní & Jesse McKinley, *N.Y. Bans Chokehold and Approves Other Measures to Restrict Police*, N.Y. Times (June 12, 2020), <https://perma.cc/44CG-4UMX>; News Editorial Board,

Editorial a Cover for Police Misconduct, Buffalo News (Nov. 2 2019), <https://perma.cc/G7MP-H2F7>; Daniela Porat, *Scant Oversight of Buffalo Police*, Investigative Post (Feb. 15, 2017) <https://perma.cc/K95X-EEQM>. Section 50-a allowed agencies to refuse disclosure of law enforcement “personnel records used to evaluate performance toward continued employment or promotion.” The statute, adopted in 1976, was a response to the practice by criminal defense lawyers to use such records to cross examine police witnesses during criminal prosecutions in order to discredit the testifying officers. Mem. of Div. of Budget, Bill Jacket, L. 1976 ch. 413 (N.Y. 1976); *see also Daily Gazette v. City of Schenectady*, 93 N.Y.2d 145, 155 (N.Y. Ct. App. 1999). However, according to the assembly sponsor’s memo accompanying the repeal of Section 50-a, what the Legislature originally intended as a narrow exemption gradually expanded “to allow police departments to withhold from the public virtually any record that contains any information that could conceivably be used to evaluate the performance of a police officer.” Assembly Sponsor’s Mem., L. 2020 c.96 (N.Y. 2020). The repeal of Section 50-a was intended to remove this overused barrier to access, making available a universe of previously-hidden data that is necessary to public oversight of the criminal justice system and enabling New Yorkers and the broader public to have informed, meaningful public debate about police culture, conduct, and reform.

Immediately preceding the repeal of Section 50-a, New York was one of only two states that specifically made records of police misconduct confidential, shielding them from disclosure under New York’s Freedom of Information Law. *See generally* Robert Lewis, Noah Veltman & Xander Landen, *Is Police Misconduct a Secret in Your State?*, WNYC (Oct. 15, 2015),

<https://perma.cc/EC7G-EP3J>.³ Section 50-a stymied newsgathering and reporting on police misconduct for nearly 45 years; simultaneously, public oversight of law enforcement suffered. Prior to the repeal of Section 50-a, amici were keenly aware of the barrier that it posed for journalists and news organizations seeking to report on the conduct of law enforcement personnel. *See, e.g., Reporters Committee Letter Urges Immediate Repeal of Section 50-a of the New York Civil Rights Law*, Reporters Comm. for Freedom of the Press (June 7, 2020), <https://perma.cc/6XQN-4L93>.

In moving for a preliminary injunction to prevent Respondents from making public the records at issue—unsubstantiated and pending misconduct allegations—Petitioners ignore the resounding voice of New Yorkers calling for increased transparency and accountability, the will of the Legislature that repealed Section 50-a, and the palpable benefits of openness not only for the public but also for Petitioners and law enforcement, generally. In sum, members of the news media—as well as social science researchers, historians, and many others—should not be denied access to data made more accessible by the Legislature through its repeal of Section 50-a.

B. A preliminary injunction will inhibit news reporting on law enforcement officers' misconduct and harm the public's right to know.

Members of the news media play a vital role in fostering public trust in, and enabling public oversight of, government institutions and functions. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980). By reviewing government records, often obtained through FOIL requests, the press gives meaning to FOIL's promise that "government is the public's business." N.Y. Pub. Off. Law §§ 84. As explained by one scholar,

³ Delaware is now the only state with a law explicitly deeming police disciplinary records confidential. Del. Code Ann. tit. 11, § 9200.

Although open records statutes allow nearly anyone to ask for government information, the media has assumed the role of “surrogate” of the public to disseminate information and hold government officials accountable, often using FOIA statutes. Because most people do not have the time, ability, or motivation to act as government watchdogs, the task has fallen to the media, which act as a sort of independent auditor of the government on behalf of the people.

Laura Danielson, *Giving Teeth to the Watchdog: Optimizing Open Records Appeals*

Processes to Facilitate the Media’s Use of FOIA Laws, 2012 Mich. St. L. Rev. 981, 989

(2012).

The abuse of power by public servants is a matter of abiding public concern. This is particularly true with regard to police misconduct, an issue that the killing of George Floyd by a Minneapolis police officer with numerous past misconduct complaints has brought to the forefront of the public’s consciousness. See Shaila Dewan & Serge F. Kovalski, *Thousands of Complaints Do Little to Change Police Ways*, N.Y. Times (May 30, 2020), <https://perma.cc/XS5L-F2HJ>. Indeed, the Legislature prioritized repeal of Section 50-a in large measure as a response to heightened public awareness of the importance of holding police officers accountable for misconduct, and concomitant calls for increased transparency. See Stephanie Wykstra, *The Fight for Transparency in Police Misconduct, Explained*, Vox (June 16, 2020), <https://bit.ly/30vGRg4>. With the repeal of Section 50-a comes a unique opportunity for members of the news media to obtain and disseminate vital criminal justice system records and to analyze and report on this newly available data in a manner that will better inform the public, improve institutional trust, report news stories that will foster meaningful community dialogue, and consider institutional and systemic reforms as warranted.

Reporting by the press that analyzes and incorporates records of police misconduct enables the public to better understand patterns of misconduct, application of disciplinary policy, and the ways in which police misconduct affects the community. For example, in 2018 BuzzFeed News

published and analyzed a collection of disciplinary findings for approximately 1,800 New York Police Department (“NYPD”) officers shielded by Section 50-a that were provided by an anonymous source. Kendall Taggart & Mike Hayes, *Here’s Why BuzzFeed Is Publishing Thousands of Secret NYPD Documents*, BuzzFeed News (Apr. 16, 2018), <https://perma.cc/XK2L-9NZB>. BuzzFeed’s reporting based on these records revealed unequal and inconsistent application of NYPD disciplinary policies, prompting the commission of an independent panel to investigate the NYPD’s disciplinary system. Kendall Taggart, *NYPD Discipline Needs More Transparency, A Panel of Experts Said*, BuzzFeed News (Feb. 1, 2019), <https://perma.cc/2MGV-ELUX>. More recently, the New York Civil Liberties Union (“NYCLU”) published an online database of more than 300,000 NYPD misconduct records received through a FOIL request following the repeal of Section 50-a. Ashley Southall, *323,911 Accusations of N.Y.P.D. Misconduct Are Released Online*, N.Y. Times (Aug. 20, 2020), <https://perma.cc/4XJ8-5TXU>. NYCLU’s preliminary analysis of this vast trove of data revealed that “less than 3 percent of the 323,911 complaints resulted in a penalty for officers.” *Id.*

Access to government records concerning police misconduct and discipline has made possible similar powerful reporting in the public interest across the nation. For example, USA Today has created a database of 85,000 officers who have been investigated or disciplined for misconduct. *See* John Kelly & Mark Nichols, *Tarnished Brass*, USA Today (last updated Oct. 14, 2019), <https://perma.cc/7YHS-PX5L>. USA Today relied on state open records laws to obtain information about more than 110,000 internal affairs investigations by hundreds of individual departments, and more than 30,000 officers who were decertified by 44 state oversight agencies. *See id.* Built on records obtained from thousands of state agencies, prosecutors,

police departments and sheriffs, the database details at least 200,000 incidents of alleged misconduct, much of it previously unreported.

USA Today's reporting was motivated, in part, by the notion that "[d]espite their role as public servants, the men and women who swear an oath to keep communities safe can generally avoid public scrutiny for their misdeeds." *Id.* The reporting seeks to help identify decertified officers who continue to work in law enforcement. *Id.* Such transparency is, as Laurie Robinson, co-chair of the 2014 White House Task Force on 21st Century Policing, has stated, "a very key step along the way to repairing [] relationships" between law enforcement and the communities they serve. *Id.*

Similarly, the Citizens Police Data Project, published by the Invisible Institute, contains the disciplinary records of Chicago police officers in a comprehensive, searchable format, from which copious examples of meaningful analysis and reporting have flowed. The data covers more than 30,000 officers and almost 23,000 complaints between 2000 and 2018. Invisible Institute, *Citizens Police Data Project* (last accessed Aug. 16, 2020), <https://perma.cc/EF6M-W47N>. Reporting based on this data has revealed striking trends in how misconduct spreads by way of example when new officers are exposed to the problematic tendencies of other officers. *See, e.g.,* Rob Arthur, *Bad Chicago Cops Spread Their Misconduct Like a Disease*, *The Intercept* (Aug. 16, 2018), <https://perma.cc/3SQU-524T> ("The data shows that [officers prone to misconduct] also may be teaching their colleagues bad habits The officers who had been exposed to the . . . misconduct-prone cops . . . went on to show complaint rates nine times higher over the next ten years than those who hadn't."). A consent decree between the State of Illinois and the City of Chicago entered last year responds to the troubling trends illuminated by the Citizens Police Data Project by formalizing an "early intervention" program to "proactively

identify at-risk behavior by officers” in an effort to stem the deleterious ripple effect of officer misconduct. *Illinois v. City of Chicago*, Case No. 1:17-cv-06260, N.D. Ill., Dkt. 703-1, Consent Decree, issued Jan. 31, 2019.

Contrary to Petitioners’ arguments, *see* Pet’rs’ Mem. at 11 (claiming that the public interest in records of unsubstantiated and pending allegations is “at its lowest ebb,” if it exists at all), the public has a significant and legitimate interest in records of even unsubstantiated and pending allegations of police misconduct. Meaningful reporting and tangible reform has flowed from access to records of even those “non-final” or “unsubstantiated” allegations of misconduct which Petitioners seek to keep shrouded in secrecy. *Compare* Pet’rs’ Mem. at 11 (insinuating no public interest in the complaints, themselves, of police misconduct, or of complaints deemed unsubstantiated by the reviewing authority) *with* Arthur, *supra* (explaining that some officers begin by engaging in conduct “right at the edge of what is acceptable procedure,” which a reviewing authority may not recognize as misconduct, but which can “attract or repel other officers” and “escalate[] . . . to more serious violence”). Nationwide, press and public access to “non-final” or “unsubstantiated” allegations of misconduct has allowed members of the public to evaluate for themselves whether the police oversight boards are timely and effectively investigating incidents of misconduct. *See* Dewan Kovalski, *supra* (noting the “reluctance of investigators . . . to second-guess an officer’s split-second decision,” and the concomitant need for more effective, robust oversight).

Petitioner’s argument also ignores the clear and unmistakable evidence—both around the nation and within Buffalo, New York—of public interest in access to records of law enforcement misconduct. Over the past months since the death of George Floyd, the citizenry en masse (followed by their elected representatives through their repeal of Section 50-a) has risen up and

demanded more information, more accountability, and more transparency. See Hannah Hagemann, *Police Injure Protester in Buffalo as Demonstrations Continue Nationwide*, NPR (June 4, 2020), <https://perma.cc/8AYU-U39J>.

Contrary to Petitioners' assertions, the release of unsubstantiated and pending allegations will not "destroy[] the reputations and privacy" of officers. See Pet'rs' Mem. at 10, 22. Local news outlets have been careful to provide meaningful context when reporting about police misconduct complaints. See, e.g., Daniel Telvock & Al Vaughters, *You Now Know the Buffalo Officers with the Most Excessive Force and Citizen Complaints in 5 Years*, WIVB.com (July 20, 2020), <https://perma.cc/QDM8-HNYD> ("It is important to note that these are only complaints, and not all complaints are found to be valid by an internal investigation by the police department.").

Moreover, disclosure of unsubstantiated and pending allegations allows for a more comprehensive identification of systemic problems in police forces, rather than damaging the reputation of individual law enforcement officers. In comparing the transparency provided for by the Chicago police misconduct data to New York's former regime of secrecy under Section 50-a, one scholar observed: "Rather than resulting in salacious gossip of isolated instances of misconduct, the Chicago database allows community members and reporters to focus on the commanders allowing misconduct to flourish." Cynthia H. Conti-Cook, *A New Balance: Weighing Harms of Hiding Police Misconduct Information from the Public*, 22 CUNY L. Rev. 148, 174 (2019). Conti-Cook explains further:

An informed debate about a police disciplinary system may question whether certain types of misconduct have too broad a range of penalties. It may question whether a type of lenient penalty is too often the outcome for serious misconduct like false statements. It may question whether certain types of misconduct, like unlawful stops, come more often from particular commands or whether certain high ranks are less likely to receive serious penalties. The Chicago database is the

type of publication that empowers communities to push reforms with data-driven analysis . . . and to make systemic change. It enables the community to face the problem in order to change it.

Id. at 174–75.

In short, the release of police misconduct records, including non-final records, makes possible powerful investigative reporting that can serve as a catalyst for important community dialogues and reform efforts. The preliminary injunction Petitioners seek would prevent or delay such reporting, to the detriment of the public’s right to know about how police officers carry out their duties and how law enforcement agencies respond to officers’ misconduct.

C. Petitioners cannot demonstrate a likelihood of success on the merits of their claims.

Petitioners advance several arguments as to the purported likelihood they will succeed on the merits of their claims. *See* Pet’rs’ Mem. at 19–36. Amici write to highlight for the Court the following two issues which undercut Petitioners’ contention that they are likely to succeed on the merits.

First, Petitioners claim that public release of the records at issue will infringe on their bargained-for contractual rights to confidentiality. *Id.* at 19–20. However, settlement agreements resolving misconduct complaints, even with a promise of confidentiality, are subject to disclosure under FOIL. *Matter of LaRocca v. Bd. of Educ. of Jericho Union Free Sch. Dist.*, 220 A.D.2d 424, 427 (N.Y. App. Div. 2d Dep’t 1995). “[A]s a matter of public policy, the Board of Education cannot bargain away the public’s right to access to public records.” *Id.* (citing *Bd. of Educ., Great Neck Union Free Sch. Dist. v. Areman*, 41 N.Y.2d 527 (N.Y. Ct. App. 1977)). Thus, secrecy agreements in Petitioners’ settlement agreements or collective bargaining agreements, whether express or implied, are not enforceable as a matter of public policy.

To the extent that the unions and agencies have agreed to confidentiality, they lack the authority to narrow the scope of what is subject to disclosure under FOIL. The Buffalo Police Department is a local agency and does not have the authority to pass a “state or federal statute” under Public Officers Law § 87(2)(a) that would exempt records from disclosure under FOIL. A statute must be enacted by the New York Legislature and signed by the governor of New York or enacted by Congress and signed by the President. *Sheehan v. City of Syracuse*, 137 Misc. 2d 438, 440 (N.Y. Sup. Ct. Onondaga Cty. 1987). For example, the Appellate Division Fourth Department held that a local law prescribing a new fee for access to records was not a “statute” under a different provision of FOIL. *N.Y. Cent. Mut. Fire Ins. Co. v. Town of Cheektowaga*, 13 A.D.3d 1189, 1190 (N.Y. App. Div. 4th Dep’t 2004). “A local agency . . . cannot immunize a document from disclosure under state law by designating it as confidential.” *Matter of Journal News v. City of White Plains*, No. 7781/11, 2012 WL 8262794, at *3 (N.Y. Sup. Ct. Westchester Cty. Mar. 20, 2012) (invalidating a local law that sought to make ethics proceedings confidential). Thus, agreements providing for confidentiality of misconduct records are neither enforceable as a matter of contract law, nor an effective statutory exemption to FOIL.

Second, Petitioners contend that release of pending and unsubstantiated misconduct records “single[s] out” firefighters and police officers among state-licensed professionals, thus violating the Equal Protection clause of the New York Constitution. Pet’rs’ Mem. at 26–28. However, the misconduct records of government employees are generally available under FOIL. *Obiajulu v. City of Rochester*, 213 A.D.2d 1055, 1056 (N.Y. App. Div. 4th Dep’t 1995) (holding that deidentified “disciplinary files” of “law department and other City personnel” containing “disciplinary charges, [and] the agency determination of those charges” are subject to disclosure). Exceptions to the release of pending or unsubstantiated complaints are only

available when based in express statutory grants of secrecy. *See Doe v. Office of Prof'l Med. Conduct of N.Y. State Dept. of Health*, 81 N.Y.2d 1050, 1052 (N.Y. Ct. App. 1993) (recognizing that the Legislature is “in the best position” to weigh the benefits and harms of public access to disciplinary proceedings before disciplinary charges are finally determined). Many professions have a statute that expressly provides for secrecy of these non-final proceedings. *See, e.g., Matter of Johnson Newspaper Corp. v. Melino*, 77 N.Y.2d 1, 10 (N.Y. Ct. App. 1990) (dentists are protected by N.Y. Educ. Law § 6510(8)); *Matter of Stern v. Morgenthau*, 62 N.Y.2d 331, 339 (N.Y. Ct. App. 1984) (judicial conduct proceedings protected by N.Y. Judiciary Law § 45); *Matter of Capoccia*, 59 N.Y.2d 549, 553 (N.Y. Ct. App. 1983) (attorneys protected by N.Y. Judiciary Law § 90(10)). Where there is no express grant of secrecy records relating to disciplinary proceedings are subject to disclosure. *See New York 1 News v. Office of the President of Borough of Staten Island*, 231 A.D.2d 524, 524 (N.Y. App. Div. 2d Dep't 1996) (releasing disciplinary records of an employee of the Borough President and noting that “factual observations are not exempt from disclosure, even in documents issued before final decision”).

Here, the Legislature accepted the Court of Appeal's invitation in *Doe* to weigh the benefits and harms of disclosing non-final disciplinary records of law enforcement officers and resoundingly concluded that the benefits outweigh the harms. 81 N.Y.2d at 1052. The repeal of Section 50-a, thus, corrects course after a long era of secrecy, so New Yorkers may “take one step forward today on transparency.” Dennis Slattery, *New York Lawmakers Vote to Repeal 50-a, Making Police Disciplinary Records Public*, N.Y. Daily News (June 10, 2020), <https://bit.ly/30tvvsY> (statement of New York State Assemblyman Daniel O'Donnell). The Legislature's decision to open such records to public scrutiny purposefully responds to the long history of a lack of public access to these records in New York.

CONCLUSION

Ensuring timely and effective public access to the records at issue here is precisely what the New York Legislature intended when it repealed Section 50-a. And when journalists are able to access, scrutinize, and report on such records, they can report news stories that foster meaningful community conversations and facilitate positive change. For all these reasons, amici urge the Court to deny Petitioners' motion for a preliminary injunction.

Dated: August 21, 2020

Respectfully submitted,



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APPENDIX A

SUPPLEMENTAL STATEMENT OF IDENTITY OF AMICI CURIAE

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

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

The Buffalo News, a multiple Pulitzer Prize-winning newspaper, is the largest news organization in the State of New York outside the New York City metropolitan area. Headquartered in Buffalo, it maintains bureaus in Washington, DC and Albany and, in addition to national and statewide news, it produces and publishes news focused on the western New York region and the city of Buffalo, including news and analysis of the local criminal justice system and public safety involving, among other things, the operations of police and fire departments within the city of Buffalo and across the western New York region.

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 E.W. Scripps Company serves audiences and businesses through local television, with 60 television stations in 42 markets, including WKBW-TV in Buffalo, New York. Scripps also owns Newsy, the next-generation national news network; national broadcast networks Bounce, Grit, Escape, Laff and Court TV; and Triton, the global leader in digital audio technology and measurement services. Scripps serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

Directly and through affiliated companies, **Fox Television Stations, LLC**, owns and operates 28 local television stations throughout the United States. The 28 stations have a collective market reach of 37 percent of U.S. households. Each of the 28 stations also operates Internet websites offering news and information for its local market.

Freedom of the Press Foundation (“FPF”) is a non-profit organization that supports and defends public-interest journalism in the 21st century. FPF works to preserve and strengthen First and Fourth Amendment rights guaranteed to the press through a variety of avenues, including building privacy-preserving technology, promoting the use of digital security tools, and engaging in public and legal advocacy.

Gannett is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states and Guam—together with the iconic USA TODAY—reach an estimated digital audience of 140 million each month.

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.

Investigative Post is an independent investigative news agency and the only news organization in Western New York dedicated exclusively to watchdog journalism. It produces fact-based, nonpartisan investigative stories and analyses on issues that matter to the citizens and taxpayers of Buffalo and the entire western New York region. It distributes its content on all major publishing platforms (print, television, radio and the web), including its own website, social media, and partnerships with Buffalo-area news organizations, enabling its investigations to reach an audience of up to 250,000 readers, viewers and listeners per story, the largest weekday reach of any news outlet in upstate New York.

Mother Jones is a nonprofit, reader-supported news organization known for groundbreaking investigative and in-depth journalism on issues of national and global significance.

The National Freedom of Information Coalition (“NFOIC”) is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the District of Columbia. Through its programs and services and national member network, NFOIC promotes press freedom, litigation and legislative and administrative reforms that ensure open, transparent and accessible state and local governments and public institutions.

National Newspaper Association is a 2,000-member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Pensacola, Florida.

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

journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

The National Press 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 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 News Publishers Association is a trade association which represents daily, weekly and online newspapers throughout New York State. It was formed in 1927 to advance the freedom of the press and to represent the interests of the newspaper industry.

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

Gothamist, The Jerome L. Greene Performance Space, and New Jersey Public Radio. Further information about programs, podcasts, and stations may be found at www.nypublicradio.org.

The 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 Leaders Association was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

The News Media Alliance is a nonprofit organization representing the interests of digital, mobile and print news publishers in the United States and Canada. 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.

Nexstar Broadcasting, Inc. (“Nexstar”) is a leading diversified media company that leverages localism to bring new services and value to consumers and advertisers through its traditional media, digital and mobile media platforms. Nexstar owns, operates, programs or provides sales and other services to 196 television stations and related digital multicast signals reaching 114 markets or approximately 62% of all U.S. television households, including WIVB and WNLO in Buffalo, New York.

Penguin Random House LLC publishes adult and children’s fiction and nonfiction in print and digital trade book form in the U.S. The Penguin Random House global family of

companies employ more than 10,000 people across almost 250 editorially and creatively independent imprints and publishing houses that collectively publish more than 15,000 new titles annually. Its publishing lists include more than 60 Nobel Prize laureates and hundreds of the world's most widely read authors, among whom are many investigative journalists covering domestic politics, the justice system, business and international affairs.

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

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

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

TEGNA Inc. owns or services (through shared service agreements or other similar agreements) 64 television stations in 52 markets, including WGRZ-TV in Buffalo, New York.

CERTIFICATE OF SERVICE

I, Michael F. Higgins, an attorney duly admitted to practice law before the courts of the State of New York, affirm under the penalties of perjury as follows:

1. I am counsel of record for Amici Curiae, the Reporters Committee for Freedom of the Press and 26 Media Organizations.
2. On August 21, 2020, I served the [Proposed] Brief of Amici Curiae the Reporters Committee for Freedom of the Press and 26 Media Organizations in Opposition to Petitioners/Plaintiffs' motion for preliminary injunction; [Proposed] order to show cause; and affirmation of Michael F. Higgins in support of the Reporters Committee for Freedom of the Press and 26 Media Organizations' Motion for Amicus Curiae Relief upon:

John James Gilmour *Counsel for Plaintiffs/Petitioners;*

William Patrick Mathewson *Counsel for Defendants/Respondents;*

Joshua Timothy Ebersole, *Counsel for New York Civil Liberties Union;*

Stephanie Ann Adams, *Counsel for James C. Kistner;*

Jeanne Marie Vinal, *Counsel for Tremel Stone*

These documents were submitted via the NYSCEF Case Filing System. All counsel of record in this case are registered NYSCEF users. Filing and service were performed by direction of counsel.



Dated: August 21, 2020
Buffalo, New York

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