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# New York Court of Appeals

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APL 2016-00072  
Nassau County Clerk's Index No. 4015/13

In the Matter of JESSE FRIEDMAN

*Petitioner-Appellant,*

– against –

KATHLEEN M. RICE, in her official capacity as the NASSAU COUNTY DISTRICT  
ATTORNEY

*Respondent-Respondent.*

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## BRIEF OF AMICI CURIAE OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 19 MEDIA ORGANIZATIONS\* IN SUPPORT OF APPELLANT

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The Reporters Committee for Freedom of the Press

Advance Publications, Inc.

American Society of News Editors

The Associated Press

Association of Alternative Newsmedia

Association of American Publishers, Inc.

Daily News, LP

The E.W. Scripps Company

First Look Media Works, Inc.

Gawker Media LLC

Hearst Corporation

Investigative Reporting Workshop at American University

MPA – The Association of Magazine Media

National Press Photographers Association

The New York Times Company

Newsday LLC

North Jersey Media Group Inc.

Online News Association

Society of Professional Journalists

Tully Center for Free Speech

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**STATEMENT OF INTEREST OF AMICI CURIAE<sup>1</sup>**

*Amici curiae* are the Reporters Committee for Freedom of the Press and 19 news media organizations. *Amici* are described in more detail in Appendix A.

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

The Second Department's decision below, holding that non-testifying witness statements are categorically exempt under FOIL, is not only contrary to the precedent of this Court, the United States Supreme Court, and the other departments of the Appellate Division, but also risks jeopardizing FOIL's ability to serve as an effective tool for public oversight of state and local government. Because the interests of the news media and the public will be harmed should this Court affirm, *amici* write separately to urge the Court to reverse.

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<sup>1</sup> Petitioner has consented to the filing of this brief. Respondent takes no position.

## INTRODUCTION AND SUMMARY OF ARGUMENT

At issue in this case is whether governmental agencies are permitted to assert a blanket exemption under the Freedom of Information Law, N.Y. Pub. Off. Law §§ 84–90 (“FOIL”), and its confidential source exemption, § 87(2)(e)(iii) for the statements of any and all witnesses who do not testify at a criminal trial.

The Second Department majority below erroneously held that such statements are “inherently confidential,” *Friedman v. Rice*, 20 N.Y.S.3d 600, 603 (N.Y. App. Div. 2015), and thus automatically exempt from disclosure under all circumstances. In doing so, it ignored clear precedent of this Court finding such blanket exemptions inimical to FOIL’s policy of open government, as well as the consistently narrow interpretations given to the confidential source exemption by the United States Supreme Court and the other departments of the Appellate Division. *See, e.g., Gould v. New York City Police Dep’t*, 89 N.Y.2d 267 (1996); *United States Dep’t of Justice v. Landano*, 508 U.S. 165 (1993). In drafting and amending FOIL, the State Legislature chose not to create a categorical exemption for non-testifying witness statements, and the decision to insert such an exemption into the statute is contrary not only to the language and purpose of FOIL, but also to the common-sense understanding of what makes a law enforcement source communication confidential. As Justice Barros’ dissent correctly recognized, application of the confidential source exemption requires either an express or

implied promise of confidentiality. *See Friedman*, 20 N.Y.S.3d at 608 (Barros, J., dissenting). Permitting a presumption of “inherent” confidentiality would flip FOIL’s burden of proof on its head, and contravene this Court’s longstanding requirement that government agencies “articulate particularized and specific justifications” for refusing to disclose documents requested under FOIL. *See Gould*, 89 N.Y.2d at 275; FOIL § 89(4)(b).

“The premise of FOIL is that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government.” *Newsday, Inc. v. State DOT*, 5 N.Y.3d 84, 88 (2005) (citations and quotations omitted). A categorical bar to public access for non-testifying witness statements, even with identifying information redacted, would significantly impair the ability of the news media to gather news and information about the government and other matters of public interest and concern. Indeed, such a blanket rule, if approved by this Court, would have consequences far beyond this case, harming the public’s right to be informed without providing any corresponding benefit, whatsoever, to either law enforcement or truly confidential sources. To countenance the Second Department’s creation of a broad, categorical exemption for non-testifying witness statements would only make it more difficult for the press to utilize FOIL as a tool to keep citizens informed about the activities of their government.

The background of this litigation, in particular, which is discussed thoroughly in *Friedman v. Rehal*, 618 F.3d 142, 145–52 (2d Cir. 2010), highlights the importance of shining a light on the government’s investigatory and prosecutorial practices and, more specifically, of permitting access to witness statements where no promise of confidentiality is made. In its opinion, the Second Circuit denied habeas relief to Friedman because, among other reasons, he had “not exhausted [his actual innocence] claim in the New York State courts,” but made clear that “the New York cases suggest that relief on this basis may be available pursuant to NY Crim. P. Section 441.10(1)h . . . ,” and that Friedman’s “case may be one in which the New York courts may be particularly sympathetic to a proceeding seeking such relief.” *Id.* at 159.

Calling into question the tactics of the police, prosecutors, judge, and the general process that led to Friedman’s guilty plea, the Second Circuit observed that “the record here suggests ‘a reasonable likelihood’ that Jesse Friedman was wrongfully convicted” and that his “guilty plea was entered under circumstances which clearly suggest that it was not voluntary.” *Id.* at 158–60. In particular, the Court observed, among other things, “that aggressive investigation techniques like those employed in petitioner’s case can induce false reports.” *Id.* at 159–60. In light of these and other observations in the Second Circuit’s opinion, public access to the substance of the witness statements here (with appropriate redactions of the

names of witnesses who object to disclosure of their identities)<sup>2</sup> is of paramount importance.

For all of these reasons, *amici* write separately to urge this Court to reverse the decision of the Second Department.

### ARGUMENT

#### **I. The Second Department erred in concluding that non-testifying witness statements are categorically and wholly exempt under FOIL.**

FOIL exists to facilitate public access to government information, which, in turn, ensures the proper functioning of this State's democratic government. *See* FOIL § 84 (“The more open a government is with its citizenry, the greater the understanding and participation of the public in government.”). In order to make government information accessible to the public, a government agency in receipt of a request for public records under FOIL must produce them unless a specific statutory exemption applies authorizing the agency to withhold the requested records or portions thereof. *See* FOIL § 87(2).

This Court has long held that “FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government.” *Capital Newspapers, Div. of Hearst Corp. v. Whalen*, 69 N.Y.2d 246, 252, 505 N.E.2d 932 (1987) (citation omitted). When an agency

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<sup>2</sup> Though New York Civil Rights Law Section 50b did not require notice to the complainants, Justice Winslow in Nassau Supreme Court asked if any of the seventeen complainants objected to the relief sought by petitioner Friedman. Fourteen expressed no objection.

seeks to withhold information, the “burden rest[s] on the agency to demonstrate that the requested material indeed qualifies for exemption.” *Hanig v. State Dep’t of Motor Vehicles*, 79 N.Y.2d 106, 109, 588 N.E.2d 750 (1992) (citing FOIL § 89(4)(b)).

As detailed below, the Second Department’s categorical application of FOIL’s confidential source exemption is contrary to this Court’s precedent and inconsistent with other courts’ treatment of that exemption. While the majority decision below erroneously concluded that non-testifying witness statements are presumptively “confidential” and exempt from disclosure, Justice Barros’ dissent correctly recognized that government agencies must proffer specific and particularized evidence of an express or implied promise of confidentiality in order to establish that a record is exempt under FOIL’s confidential source exemption.

**A. Blanket, categorical exemptions from disclosure are contrary to FOIL.**

As this Court has clearly and unambiguously stated, “blanket exemptions for particular types of documents are inimical to FOIL’s policy of open government.” *Gould v. New York City Police Dep’t*, 89 N.Y.2d 267, 275, 675 N.E.2d 808 (1996) (citation omitted). Indeed, this Court has routinely rejected arguments for the categorical application of an exemption as incompatible with FOIL’s purpose and mandate of open government. *See, e.g., Matter of M. Farbman & Sons, Inc. v. New York City Health & Hosps. Corp.*, 62 N.Y.2d 75, 81, 464 N.E.2d 437, 439

(1984) (“Given FOIL’s purpose, its broad implementing language, and the narrowness of its exemptions, article 31 cannot be read as a blanket exception from its reach.”); *Matter of Fappiano v. New York City Police Dep’t*, 95 N.Y.2d 738, 748, 747 N.E.2d 1286, 1291 (2001) (“While Civil Rights Law § 50–c mandates caution by imposing civil liability upon governmental entities that disclose the identity of a sex crime victim in violation of section 50–b, that fact does not justify a blanket denial of a request for any documents relating to a sex crime.”<sup>3</sup>); *Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 569, 496 N.E.2d 665 (1986) (concluding that “[i]nsofar as” the Appellate Division “relied on a blanket exemption in section 50-a, it erred”). Likewise, “theoretical” or “speculative” arguments about how a group of records falls within an exemption are insufficient to withhold them under FOIL. *See Matter of Markowitz v. Serio*, 11 N.Y.3d 43, 51, 893 N.E.2d 110, 113-14 (2008). An agency that seeks to deny access to a record “must articulate *particularized and specific* justification[s] for not disclosing requested documents.” *Gould*, 89 N.Y.2d at 275 (quotation and citation omitted) (emphasis added).

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<sup>3</sup> As Justice Barros’ dissent below made clear, protecting the identities of victims of sex crimes is not at issue here. Indeed, (1) prior to the entry of Petitioner’s guilty plea, the District Attorney provided defense counsel with the names of *all* the complainants in anticipation of calling them as witnesses at trial, and (2) Petitioner only requests the relief proposed in Justice Barros’ dissent, i.e., the release of the redacted materials provided to the advisory panel, and the grand jury minutes and investigatory and case files with redactions over the names of complainants who object to the disclosure of their identities. *Friedman*, 20 N.Y.S.3d at 831, 835-36 (Barros J., dissenting).

The decision below ignored this Court's repeated admonishments that blanket exemptions for entire categories of documents are impermissible under FOIL. Instead, it concluded that statements of non-testifying witness are categorically "confidential and not disclosable under FOIL" because such statements are "inherently confidential." *Friedman*, 20 N.Y.S.3d at 603. Even setting aside the majority's erroneous interpretation of the confidential source exception, which is discussed in more detail below, the imposition of a blanket exemption for certain types of documents is wholly improper. As Justice Barros, in his dissenting opinion, recognized:

The unduly broad construction of the confidentiality exemption given by this Department is inconsistent with the Court of Appeals' holdings that reject blanket exemptions for particular types of documents, and that require the agency invoking one of the exemptions of Public Officers Law § 87(2) to articulate particularized and specific justification for not disclosing requested documents and, if necessary, submit the requested materials to the court for in camera inspection.

*Id.* at 834–35, 20 N.Y.S.3d at 607-08 (Barros, J., dissenting) (citations and quotations omitted).

The State Legislature knows well how to craft a blanket exemption under FOIL for certain types of records if it so desires. *See, e.g.*, Motor Vehicles—Municipalities—Traffic Rules And Regulations, 2015 Sess. Law News of N.Y. Ch. 222 (S. 5688) (exempting "photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-e of



the vehicle and traffic law”); *cf. Matter of M. Farbman & Sons, Inc.*, 62 N.Y.2d at 81, 464 N.E.2d at 440 (“if the Legislature had intended to exempt agencies involved in litigation from FOIL, it certainly could have so provided.”). In the absence of an express mandate from the Legislature explicitly exempting specific types of records from disclosure, however, FOIL’s general exemptions must be interpreted narrowly, and applied in a case-by-case—not categorical—manner. There is no justification for the Second Department’s departure from this Court’s jurisprudence or from FOIL’s mandate that the agency bear the burden to provide specific and particular information establishing that requested material is exempt. *See Gould*, 89 N.Y.2d at 275; *Hanig*, 79 N.Y.2d at 109; FOIL § 89(4)(b). For this reason alone the decision below should be reversed.

**B. The Second Department’s interpretation of FOIL’s confidential source exemption conflicts with decisions of this Court, the United States Supreme Court, and other Appellate Divisions.**

Subsection 87(2)(e)(iii) of FOIL permits an agency to “deny access to records or portions thereof that . . . identify a confidential source or disclose confidential information relating to a criminal investigation[.]” The conclusion of the Second Department that statements of non-testifying witnesses are categorically exempt from disclosure under this provision, *Friedman*, 20 N.Y.S.3d at 602, is not only contrary to this Court’s precedent, but also conflicts with interpretations given the confidential source exemption by the United States

Supreme Court and the other departments of the Appellate Division, *see id.* at 606–08 (Barros, J., dissenting). In short, courts *other than* the Second Department have uniformly required a particularized showing of either an express or implied promise of confidentiality for a government agency to withhold information under a confidential source exemption.<sup>4</sup>

While this Court has not established the full contours of FOIL’s confidential source exemption, it has made clear that it is inappropriate to apply a blanket exemption to witness statements made to law enforcement. In *Gould*—a consolidation of three cases brought by persons seeking records related to their arrests by the NYPD—this Court addressed whether witness statements contained in complaint follow-up reports fell within FOIL’s inter-/intra-agency materials exemption and its exceptions, § 87(2)(g), and held that they contain “substantial factual information available pursuant to the provisions of FOIL.” 89 N.Y.2d at 277. In doing so, this Court rejected the blanket application of *any* of FOIL’s exemptions, stating that:

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<sup>4</sup> The decision reached by the majority below followed other previous Second Department decisions that have come to a similar conclusion. *See, e.g., Matter of Johnson v. Hynes*, 264 A.D.2d 777, 695 N.Y.S.2d 380, 381 (N.Y. App. Div. 1999) (concluding that “the statements of non-testifying witnesses are confidential and not disclosable under FOIL”) (citation omitted). However, this line of authority is not only contrary to the holdings of this Court, the U.S. Supreme Court and all other departments of the Appellate Division, but it was also abrogated by the 1977 amendments to the New York FOIL. *See Friedman*, 20 N.Y.S.3d at 833 (Barros, J. dissenting) (citing *Matter of Miracle Mile Assoc. v. Yudelson*, 68 A.D.2d 176, 181, 417 N.Y.S.2d 142 (4th Dep’t 1979) (the 1977 amendments “broadened the reach of the statute by making all records presumptively subject to disclosure, rather than certain enumerated categories.”)).

the Police Department is entitled to withhold complaint follow-up reports, or specific portions thereof, under any other applicable exemption, such as the law-enforcement exemption or the public-safety exemption, as long as the requisite *particularized showing* is made.

*Gould*, 89 N.Y.2d at 277 (emphasis added). Thus, the Court made clear that absent a “particularized showing” that a witness statement or portions thereof are exempt from disclosure, they cannot be withheld under FOIL. *See id.*

The rejection of a blanket confidentiality rule, along with the requirement of a “particularized showing” for the confidential source exemption to apply, is consistent with the United States Supreme Court’s interpretation of the analogous exemption in the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).<sup>5</sup> *See* 5 U.S.C. § 552(b)(7)(D) (allowing agencies to withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected

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<sup>5</sup> Both FOIL generally, and its law enforcement exemption in particular, are based on the federal FOIA; accordingly, federal case law and FOIA’s legislative history are instructive when interpreting related provisions of FOIL. *Leshner v. Hynes*, 19 N.Y.3d 57, 64, 968 N.E.2d 451, 455–56 (2012). FOIL’s exemption for confidential sources/information, § 87(2)(e)(iii), most closely mirrors the 1974 version of FOIA’s Exemption 7(D), which applied to “investigatory records compiled for law enforcement purposes [the production of which] would ... disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, ... confidential information furnished only by the confidential source.” *United States Dep’t of Justice v. Landano*, 508 U.S. 165, 171–72 (1993) (citations and quotations omitted). Congress amended Exemption 7(D) in 1986 in several ways, including replacing “would” with “could reasonably be expected to”, *id.*, but the New York State Legislature did not follow suit, despite having done so previously when Congress modified Exemption 7(A). *See Leshner*, 19 N.Y.3d at 65. Accordingly, the Supreme Court’s rejection of a blanket confidentiality rule in *Landano* was based on a *more flexible* standard than FOIL’s confidential source exemption at issue in this case.

to disclose the identity of a confidential source . . . .”). Before 1993, some federal courts had adopted a presumption of confidentiality for persons or entities that provided information to the FBI during criminal investigations. That presumption was unanimously rejected in *United States Department of Justice v. Landano*, 508 U.S. 165 (1993), when the United States Supreme Court considered the blanket confidentiality rule in the context of an inmate seeking information related to his conviction that he believed was unlawfully withheld in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). While the FBI turned over some records to Landano, it withheld others pertaining to information provided by various types of sources, including individual witnesses who were not regular informants, claiming that they were confidential sources under Exemption 7(D). *Id.* The FBI’s position was that “an assurance of confidentiality is ‘inherently implicit’ whenever a source cooperates with the FBI in a criminal investigation.” *Id.* at 174 (quoting Petitioners’ Brief); *cf. Friedman*, 20 N.Y.S.3d at 603 (holding that non-testifying witness statements are “inherently confidential”).

The FBI’s arguments were unanimously rejected by the Supreme Court, which held that that the government “is not entitled to a presumption that a source is confidential within the meaning of Exemption 7(D) whenever the source provides information to the FBI in the course of a criminal investigation.” *Id.* at 181. The Court noted that there are a variety of sources that provide information to

the FBI for many different reasons under varying expectations of confidentiality. *See id.* at 175–76. To conclude that all of those entities are confidential sources simply does not comport with “common sense and probability.” *Id.* at 175.

The Court also noted that a presumption of confidentiality for entities that gave information to the FBI ran afoul of a basic rule of “fairness,” *id.* at 176, because once a law enforcement entity claimed that a source was confidential the records requester would almost never have information to rebut the presumption. *See id.* at 176–77; *cf. Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462 (2007) (finding that the agency had attempted an “improper burden-shifting” with respect to FOIL’s privacy exemption). Accordingly, the Supreme Court held that a blanket confidential source rule for persons that provide information to law enforcement during a criminal investigation was incompatible with FOIA’s mandate of an open government. *Landano*, 508 U.S. at 180–01.

Under the rubric set out by *Landano*, there are two circumstances in which a source can be considered confidential: (1) if they “provided information under an express assurance of confidentiality” or (2) in “circumstances from which such an assurance [of confidentiality] could be reasonably inferred.” *Id.* at 172 (quoting S.Rep. No. 93–1200, at 13, U.S. Code Cong. & Admin. News pp. 6267, 6291). With regard to the second category, the Court held that there are “narrowly defined circumstances that will support the inference[,]” which depend on the type of crime

and the source's relation to it. *Id.* at 179. For example, the Court noted that paid informants and witnesses to a gang-related murder would qualify. *Id.* This “workable rule” balances FOIA’s mandate of openness with protecting confidential sources who truly risk reprisal from being identified. *See id.* at 180–01.

As Justice Barros’ dissenting opinion below correctly notes, the other departments of the Appellate Division have followed *Landano* and rejected a blanket confidentiality rule for persons who provide information to law enforcement during an investigation, holding instead that FOIL requires a particularized showing that requested material falls within § 87(2)(e)(iii). *See Friedman*, 20 N.Y.S.3d at 607 (Barros, J., dissenting).

The First Department recently rejected a blanket confidentiality rule in *Exoneration Initiative v. New York City Police Department*, holding in that case that the NYPD had failed to provide “any evidence that [the witness in question] received an express or implied promise of confidentiality.” 980 N.Y.S.2d 73, 77 (N.Y. App. Div. 2014) (citation omitted). It had previously reached a similar conclusion in *Cornell University v. City of New York Police Department*, where it stated:

As to the concern for the privacy of the witnesses to the assault, NYPD has not alleged that anyone was promised anonymity in exchange for his cooperation in the investigation so as to qualify as a “confidential source” within the meaning of the statute (Public Officers Law § 87 [2] [e] [iii]). Any of the witnesses could have been called to testify at a criminal trial, their names and addresses were

discoverable absent a protective order pursuant to CPL 240.50 and, in fact, may have been disclosed.

544 N.Y.S.2d 356, 358 (N.Y. App. Div. 1989); *see also Johnson v. New York City Police Dep't*, 694 N.Y.S.2d 14, 19 (N.Y. App. Div. 1999) (an “attempt to apply such an exemption to all information imparted by all witnesses under any circumstances is overly broad.”).

Likewise, the Third Department in *Gomez v. Fischer* held that witness statements during an interview with investigators “must be disclosed absent a showing that he or she was a confidential informant or requested or was promised anonymity, or that his or her life or safety would be endangered by disclosure.” 902 N.Y.S.2d 212, 215 (N.Y. App. Div. 2010) (citations omitted); *see also Matter of John H. v. Goord*, 809 N.Y.S.2d 682, 683 (N.Y. App. Div. 2006) (rejecting blanket assertion that inmates who cooperate in investigation are confidential sources).<sup>6</sup>

The Fourth Department has reached largely the same conclusion as the First and Third Departments. *Compare Brown v. Town of Amherst*, 600 N.Y.S.2d 601, 602 (N.Y. App. Div. 1993) (holding blanket application of confidential source and

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<sup>6</sup> In an earlier decision cited by the majority opinion below, *Matter of Spencer v. New York State Police*, the Third Department stated without explanation that non-testifying witness statements “should” be exempt from disclosure under FOIL, but did not identify which exemption it believed applied. 591 N.Y.S.2d 207, 210. The Respondent in that case did not cite the confidential source exemption at issue here as the basis for withholding any requested material. *See id.* at 209.

other law enforcement exemptions was inappropriate absent evidence that the requested material qualified), *with Hawkins v. Kurlander*, 469 N.Y.S.2d 820, 822 (N.Y. App. Div. 1983) (use of confidential source exemption was warranted where law enforcement “entered into an agreement” with sources “whereby they would cooperate with the investigation in exchange for confidentiality.”).<sup>7</sup>

In sum, the Second Department stands alone in applying a blanket exemption for witness statements given to police during a criminal investigation when those witnesses do not later testify at a trial. Its reasoning for doing so contravenes FOIL’s structure and purpose, this Court’s decision in *Gould*, the United States Supreme Court’s decision in *Landano*, and the opinions of the other departments of the Appellate Division. Moreover, its underlying presumption—that *every* witness who relays information to law enforcement does so pursuant to an implied promise of complete and total secrecy, regardless of the nature of the crime or his or her relation to it—defies common sense. *Cf. Landano*, 508 U.S. at 179. Most persons who give statements to law enforcement in the context of an investigation understand that such proceedings often result in trials, further

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<sup>7</sup> The majority opinion below purports to rely on a decision from the Fourth Department, *Matter of Williams v. Erie Cty. Dist. Atty.*, 255 A.D.2d 863, 682 N.Y.S.2d 316 (1998). The holding in that case, however, addressed only the release of criminal history records, and did not address the confidential source exemption in FOIL § 87(2)(e)(iii).



investigations, and public dissemination of information.<sup>8</sup> Certainly, a witness who gives information in reliance on an express promise of confidentiality, such as in *Hawkins*, 469 N.Y.S.2d 820, or under circumstances that give rise to a clear inference of an implied promise of confidentiality, such as in the case of a witness to a gang-related murder, *Landano*, 508 U.S. at 179, the witness can be expected to have a different understanding. But absent such an express or implied promise of confidentiality, application of the confidential source exemption is not warranted.

Finally, it should be noted that the Second Department's blanket exemption for non-testifying witness statements goes well beyond the type of impermissible burden-shifting that this Court rejected in *Matter of Data Tree*, 9 N.Y.3d 454. By holding that such statements are "inherently" confidential it does not provide even an opportunity for a public records requester to rebut that assumption by providing evidence that the witness did not expect confidentiality. It also does not permit for more narrowly-tailored redactions of names and other identifying information.

Such an iron-clad rule defies any sense of "fairness," and is one of the reasons that the Supreme Court rejected such a presumption in the context of FOIA. *See Landano*, 508 U.S. at 176.

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<sup>8</sup> Indeed, absent recognition of the categorical exemption applied by the majority below, there is no reasonable basis to conclude that any of the complainant witnesses were impliedly promised confidentiality considering the District Attorney acknowledges it disclosed all of the complainants' names prior to Petitioner's guilty plea, and necessarily intended to call them as witnesses had the case gone to trial. *Friedman*, 20 N.Y.S.3d at 835-36 (Barros, J., dissenting).

**II. Access to witness statements is crucially important for the press to keep the public informed about the activities of state and local government agencies, including law enforcement agencies.**

Journalists across New York frequently rely on witness statements given to law enforcement to report on matters of public concern. Such statements, often obtained through FOIL requests, help the press inform citizens of New York and the nation about the activities of government and of newsworthy events. Such reporting is an integral part of FOIL's purpose. *See* FOIL § 84 (acknowledging that "government is the public's business and [] the public, individually and collectively and *represented by a free press*, should have access to the records of government in accordance with the provisions of this article") (emphasis added). If *all* witness statements given to law enforcement are exempt when there is not a criminal trial in which the witness testifies, as the Second Department held below, the public's understanding of government actions and newsworthy events will be substantially diminished, if not entirely eliminated in many cases.

Witness statements given to police and released under FOIL can fill in crucial, and otherwise unavailable, details about the actions of government employees. In 2012, witness statements proved to be crucial for understanding the Albany police's involvement in the death of a 17-year old who was killed by another driver being pursued by police. *See* Brendan J. Lyons, *City pays \$200G in police-pursuit death*, Times Union (Jan. 24, 2012), *archived at*

<https://perma.cc/T2H9-9B84>. In that case, the officers involved initially said that they had stopped pursuing the driver long before she crashed into and killed the teenager. *Id.* The teenager's parents requested records on the event from the City of Albany under FOIL, who refused to give unredacted witness statements until ordered to by the Third Department. *See Matter of Carnevale v. City of Albany*, 68 A.D.3d 1290, 891 N.Y.S.2d 495 (N.Y. Ct. App. 2009). The City subsequently turned over two witness statements to the parents that supported their version of the events. *See Lyons, supra.* It was later discovered, however, that there were seven additional witness statements that had not been disclosed, several of which indicated that the police had continued chasing the suspect with their sirens off after a senior officer said to stop the pursuit, and, in fact, were behind the suspect seconds before the fatal crash. *See Brendan Lyons, City hid details of teen's death from family*, Times Union (May 16, 2011), *archived at* <https://perma.cc/WD9G-3WK2>. These witness statements proved crucial to the family obtaining a settlement with the City over the police officers' actions. Without access to those witness statements neither the public nor the teenager's family would ever have known the extent of the police's involvement in the incident.

Access to witness statements can be important in evaluating the accuracy of law enforcement's documentation of controversial incidents. For example, the *Buffalo News* used FOIL to obtain a police report with witness statements for an

incident where an off-duty police officer put a gun to the head of a person that was mediating a disagreement. Joseph Popiolkowski, *Kenmore officer resigns after altercation while moonlighting*, The Buffalo News (Jun. 14, 2014), archived at <https://perma.cc/Q7N7-WBSM>. Police responding to the scene created a report, which included the statements of witness, but the report did not mention the officer pulling out his weapon. *Id.* The person subsequently complained about the officer's actions, and the officer was placed on leave and then suspended before he resigned. *Id.* Access to the police report, including the witness statements it contained, helped inform the public about the event and called into question the accuracy of reporting on incidents that involve off-duty law enforcement personnel.

Sometimes witness statements in police reports are the only pieces of evidence that give clues as to the decisions of government entities. Last year, the *Poughkeepsie Journal* used FOIL to obtain a settlement agreement and police report that revealed the reasons for a public school administrator's sudden resignation. Nina Schultzman, *City school official resigns after prostitution allegation*, Poughkeepsie Journal (Jul. 13, 2015), archived at <https://perma.cc/K9DZ-7FV2>. The police report contained the statement of a sex worker, who detailed how the administrator allegedly solicited her services on district grounds, and the settlement agreement showed that the district agreed to

remove all details about his resignation from his personnel file and provide him with a “positive reference letter.” *Id.* Without access to the statements in the report and settlement agreement under FOIL, the public, and indeed, the next school district that sought to hire the administrator, would not have a complete picture as to the circumstances of the resignation.

Witness statements in police reports also supply crucial details about incidents of widespread public interest. Such statements are, in many cases, the only information that exists. The circumstances of Diane Schuler’s 2011 car crash, which resulted in her death as well as the deaths of her daughter, her three nieces, and three other individuals, and captured national attention, were explained in part through witness statements provided to state police and reported by the news media. *See, e.g.,* Hoa Nguyen, *The Journal News*, *N.Y. State Police report says wrong-way driver looked sick*, USA Today (Nov. 11, 2009), *archived at* <https://perma.cc/V8KA-FMQW>; Kieran Crowley, *Taconic ma twice car sick*, New York Post (Nov. 9, 2009), *archived at* <https://perma.cc/YB5N-5XHC>. Those witness statements indicated that Schuler looked ill as she stood on the side of the road, was weaving in and out of traffic, and was driving erratically and aggressively. *See id.* An autopsy later showed that she had elevated levels of both alcohol and THC in her body. *Id.* The statements gave the public a fuller picture

of the events that led to the tragic accident at a time when there was massive uncertainty and controversy over its causes.

In another event that was widely reported across New York, Corey Foster, a 16-year old student at a residential center in Yonkers, died after being physically restrained by staff. *See* Nina Bernstein, *No charges in death at Yonkers Center for Youths*, The N.Y. Times (Aug. 2, 2012), <http://nyti.ms/1yUoRKv>. Even though the news media was able to obtain surveillance video of the event, it was access to the witness statements under FOIL that provided additional details that helped the public understand the circumstances of the event. *See* Lee Higgins & Shawn Cohen, *Foster shown in restraint*, The Journal News, Oct. 19, 2012, at A1. According to The Journal News, which submitted the records request, the witness statements “provide[d] the comprehensive detail that is lacking in the video.” *Id.* They provide moment-by-moment details on the circumstances that led up to the incident, exactly how he was restrained, and the aftermath. *See id.* An investigation by the local police into the incident concluded without criminal charges being brought. *Id.*

Witness statements can prove invaluable in helping evaluate whether policies and training for government personnel need to be changed. In 2008, *The New York Times* used FOIL to obtain a police report on a chaotic 2007 shootout in the Catskill Mountains that resulted in two deaths, including a state trooper.

Fernanda Santos, *Trooper Death Is Detailed in New Report*, The N.Y. Times (Jul. 28, 2008), <http://nyti.ms/27blb4E>; *see also* Robert Gavin, *Report sheds light on trooper's last moments; State Police document offers new details of deadly shootout at farm*, The Times Union, Jul. 29, 2008, at A1. The incident “raised questions about the quality of the unit’s training, the tactics its members used in the farmhouse that morning and the conduct of the trooper who fired the fatal round.” Santos, *supra*. The report on which the *Times*’ story was based was created from many sources, including “statements from dozens of witnesses” who were at the scene. *Id.* The report allowed the public to understand the sequence of events that lead to the troopers’ death, and the State Police instituted several changes to their equipment and tactics as a result of the incident, *id.*

These stories represent only a handful of examples of the countless pieces of important journalism that access to witness statements has made possible. From providing details about criminal suspects who evaded New York law enforcement and fled the country,<sup>9</sup> to food manufacturing plant safety violations,<sup>10</sup> to details

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<sup>9</sup> *See* Carolyn Salazar, *How Brute Left Victim for Dead*, New York Post (Jun. 29, 2008), *archived at* <https://perma.cc/W54L-43VV>; Isabel Vincent, *Bar Fighter Hiding Out in Serbia*, New York Post (Jun. 27, 2008), *archived at* <https://perma.cc/GP68-SN7B>.

<sup>10</sup> Anthony Borrelli & Megan Brockett, *OSHA cites spiedie sauce plant after worker's fall*, Press & Sun-Bulletin (Mar. 29, 2016), *archived at* <https://perma.cc/WK8K-Z6AX>.

about mass shootings,<sup>11</sup> the list of what these statements have brought to light for the public is almost endless.

Even when not related specifically to obtaining witness statements given to police, broad access through FOIL—even where sensitive information regarding children and/or sexual abuse is involved—time and again has served the important interest of keeping the public informed on matters of public concern, and oftentimes has contributed to meaningful change in public policy. For example, in 2006, Human Rights Watch and the ACLU issued a report based in large part on thousands of complaints by incarcerated girls obtained through FOIL (with compromising information redacted) detailing the widespread and excessive use of violent restraints, sexual abuse, and denial of mental health, educational, and other essential rehabilitative services to girls in New York’s juvenile prisons, Tryon and Lansing.<sup>12</sup> Following the issuance of this report, the U.S. Department of Justice, Civil Rights Division initiated an investigation into the practices at these and other New York prison facilities, and in 2010 announced a comprehensive agreement with New York state to remedy these and other violations and ensure that the

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<sup>11</sup> Doug Schneider, *Year in review-New reports reveal Wong ready to snap*, Press & Sun-Bulletin, Dec. 27, 2009, at A1.

<sup>12</sup> Aryeh Neier, “Custody & Control: Conditions of Confinement in New York’s Juvenile Prison for Girls,” Human Rights Watch & American Civil Liberties Union (Sept. 24, 2006), *available at* <https://www.hrw.org/report/2006/09/24/custody-and-control/conditions-confinement-new-yorks-juvenile-prisons-girls>.



constitutional rights of inmates at the state's juvenile justice facilities are respected and upheld.<sup>13</sup>

Similarly, in 2014, the *New York Post* used FOIL to obtain a report by the Special Commissioner of Investigation for New York City schools revealing that more than 100 city teachers, administrators and other school staffers had been caught engaging in sexual or "inappropriate" relationships with students from 2009 to 2014, resulting in the suspension, firing, or prosecution of numerous individual teachers. See Susan Edelman and Melissa Klein, "Probe finds 104 school staff-student flings since 2009," *New York Post* (Apr. 13, 2014), *archived at* <https://perma.cc/RTQ5-ZSA9>. This report highlighted for the public the significant problem of teacher sexual misconduct with students and shined a light on the misconduct of certain teachers to help ensure they were not placed in a position to repeat their unlawful actions.

*Amici* and the citizens of New York have a compelling interest in ensuring that FOIL is not interpreted to prohibit the release of this information.

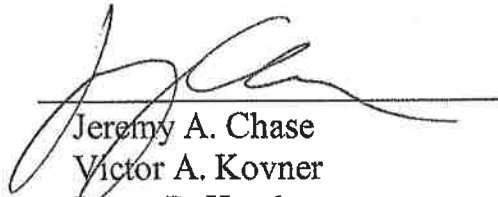
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<sup>13</sup> Press Release, "Justice Department Announces a Comprehensive Agreement with New York to Remedy Violations and Ensure Constitutional Rights at Four Juvenile Justice Facilities," U.S. Department of Justice (July 14, 2010), *archived at* <https://perma.cc/7C7B-HGFB>.

**CONCLUSION**

For all the reasons stated herein and in Appellant's brief, this Court should  
reverse.

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## APPENDIX A

### Descriptions of amici:

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

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

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.

**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.

**The E.W. Scripps Company** serves audiences and businesses through television, radio and digital media brands, with 33 television stations in 24 markets, including WKBW in Buffalo, New York. Scripps also owns 34 radio stations in eight markets, as well as local and national digital journalism and information businesses, including mobile video news service Newsy and weather app developer WeatherSphere. Scripps owns and operates an award-winning investigative reporting newsroom in Washington, D.C. and serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

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

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

**Hearst Corporation** is one of the nation's largest diversified media and information companies. Its major interests include ownership of 15 daily and more than 30 weekly newspapers, such as the Albany Times Union, as well as the Houston Chronicle, San Antonio Express-News, and San Francisco Chronicle; hundreds of magazines around the world, including Good Housekeeping, Cosmopolitan, ELLE and O, The Oprah Magazine; 31 television stations, which reach a combined 18 percent of U.S. viewers; ownership in leading cable networks, including Lifetime, A&E, HISTORY and ESPN; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; a majority stake in global ratings agency Fitch Group; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

**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.

**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.

**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.

**North Jersey Media Group Inc.** (“NJMG”) is an independent, family-owned printing and publishing company, parent of two daily newspapers serving the residents of northern New Jersey: *The Record* (Bergen County), the state’s second-largest newspaper, and the *Herald News* (Passaic County). NJMG also publishes more than 40 community newspapers serving towns across five counties and a family of glossy magazines, including (201) Magazine, Bergen County’s premiere magazine. All of the newspapers contribute breaking news, features, columns and local information to NorthJersey.com. The company also owns and publishes Bergen.com showcasing the people, places and events of Bergen County.

**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.

**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.

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

## APPENDIX B

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**APPENDIX C**

**CORPORATE DISCLOSURE STATEMENTS  
OF *AMICI***

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
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APL 2016-00072

Nassau County Clerk's

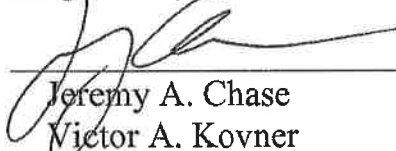
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF  
REPORTERS COMMITTEE OF FREEDOM OF PRESS**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Reporters Committee for the Freedom of Press certifies that it is an unincorporated association of reporters and editors with no parent or subsidiary companies.

Dated: June 14, 2016

Respectfully Submitted,



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*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

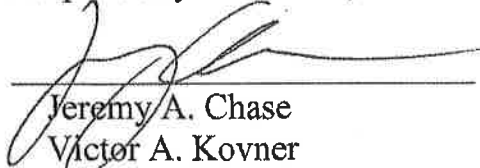
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF  
ADVANCE PUBLICATIONS, INC.**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Advance Publications, Inc. ("Advance") certifies that it has no parent corporation, no publicly held corporation owns any of its stock, and a listing of its subsidiaries and affiliates is annexed as Exhibit A.

Dated: June 14, 2016

Respectfully Submitted,



Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

DAVIS WRIGHT TREMAINE LLP

1251 Avenue of the Americas

21st Floor

New York, NY 10020

Tel.: (212) 489-8230

Fax: (212) 489-8340

*Counsel of Record for Amici Curiae*

**EXHIBIT A**  
**Parent, Subsidiaries and Affiliates**  
**of**  
**Advance Publications, Inc.**

A/NP Holdings Sub LLC	Advance/Newhouse Programming Partnership
A/NPC Holdings LLC	American City Business Journals, Inc.
A/NPC Data Holdings Corp.	The Business Journals Division
1010data Holdings Corp.	New Media Division
A/NPP Holdings LLC	Sporting News Division
A/NPP Holdings Sub LLC	Street & Smith Sports Group Division
ACBJ (UK) Limited	AMPI Journal Properties LLC
Advance Alabama Media LLC	API Network LLC
Alabama Media Group	Australian Pacific (001) Projects Pty. Limited
Advance Central Services	Beijing Condé Nast Digital Co., Ltd.
Alabama	Beijing Condéworld Distribution Co., Ltd. [PRC]
Advance BCI, Inc.	Birmingham Business Journal, Inc.
Advance Central Services Inc.	Biz Books LLC
Advance Communication Company LLC	Bizjournals.Com LLC
Advance Digital Inc.	Blogpayer, Inc.
Advance Executive Payroll, LLC	Boston Business Journal, Inc.
Advance Finance Group LLC	Business Journal Publications, Inc.
Advance Local LLC	Business Journals of Ohio Inc.
Advance Magazine Publishers Inc.	Business People Publications Limited
Condé Nast Division	City Business Journals Network, Inc.
Condé Nast Digital Division	CityBusiness/Twin Cities, Inc.
Golf Digest Division	CityBusiness/USA LLC
Advance New Jersey LLC	CN Commerce Ltd.
Advance Programming Holdings, LLC	CNE Productions LLC
Advance Publications of Perry & Juniata Counties, Inc.	CNI Ediciones Holdings Inc.
Advance Publications Private Payroll LLC	ComCorp, Inc. d/b/a Sun Media
Advance.net LLC	Condé Nast & National Magazine Distributors Limited
Advance/Newhouse Investment Partnership	Condé Nast (CNI) Limited
Advance/Newhouse Partnership	Condé Nast (India) Private Ltd.

Condé Nast Advertising (Shanghai) Co., Ltd.  
 Condé Nast Americas Holdings, Inc.  
 Condé Nast Americas L.C.  
 Condé Nast Asia/Pacific, Inc.  
 Condé Nast Brasil Holding Ltda.  
 Condé Nast Cultural Enterprise Consulting (Shanghai) Co., Ltd. [PRC]  
 Condé Nast de Colombia, S.A.  
 Condé Nast de Mexico S.A. de C.V.  
 Condé Nast Digital Germany GmbH  
 Condé Nast Digital Limited  
 Condé Nast Entertainment LLC  
 Condé Nast Holdings (HK) Ltd.  
 Condé Nast International Inc.  
 Condé Nast International Ltd.  
 Condé Nast Japan LLC  
 Condé Nast Johansens Limited  
 Condé Nast New Markets Europe/Africa, Inc.  
 Condé Nast Publications Limited [Hong Kong]  
 Condé Nast Russia LLC  
 Condé Nast Taiwan Publications Limited  
 Condé Nast Treasury Services Ltd.  
 Condé Nast Verlag GmbH [Germany]  
 Condé Nast ZAO  
 Condénet Iberica, S.L.  
 Condénet.au Pty Limited  
 CondéNet.tw Limited  
 CV of Viera LLP  
 Easton Publishing Company a/k/a  
 Lehigh Valley Media Group  
 Ediciones Condé Nast S.A. [Spain]  
 Ediciones Conelpa, S.L.  
 Edizioni Condé Nast GmbH  
 Edizioni Condé Nast S.p.A. [Italy]  
 Executive Sports Limited  
 Fashion Networks International, LLC  
 FTI Ventures LLC  
 G.K. Condé Nast Japan  
 Glamour Magazines (Publishers) Limited  
 Grupo de Publicaciones Ideas de Argentina, S.A.  
 Hemmings Motor News, Inc.  
 Interculture Communications, Inc. [Taiwan]  
 Interculture Magazine Co., Ltd.  
 Interculture Publicist Co. Ltd.  
 IPG International LLC  
 La Cucina Italiana S.r.l  
 Leaders in Performance Limited  
 Les Publications Condé Nast S.A. [France]  
 Lower Broadway Productions LLC  
 Magazine Holdings Limited  
 Magazine Special Projects LLC  
 MassLive LLC  
 MatchCraft LLC  
 Media Consortium LLC  
 Media Edition International SNC  
 Media Group Services LLC  
 MGS Holdings LLC  
 Mid-South Communications, Inc.  
 Montrose GmbH  
 Nashville Business Journal, Inc.  
 New Jersey Local News Service LLC  
 New Jersey On-Line LLC  
 New Jersey Press Equipment LLC  
 Newark Morning Ledger Co.  
 Newspaper Special Projects LLC  
 Newsprint Purchasing, LLC  
 NJ Advance Media LLC  
 NJN Publishing Company  
 Northeast Ohio Marketing Network LLC  
 Pacman Insurance Inc.



Parade Media Group LLC  
Penn Jersey Advance Inc.  
Penn Jersey Advance Central Services  
Perform Sporting News Ltd.  
Pharos Publications Limited  
PF Festivals LLC  
Plain Dealer Publishing Co.  
POP, Inc.  
Quadratum Publishing USA, Inc.  
reddit, Inc.  
Regie 56A SNC  
Rhinebeck Properties LLC  
Servicios Profesionales y  
Administrativos Editoriales S.A. de  
C.V.  
Shanghai Condé Nast Advertising  
Co., Ltd. [PRC]  
South Jersey Newspapers Company  
a/k/a South Jersey Media Group  
Special Project Services, LLC  
St. Louis Business Journal Corp.  
Staten Island Live LLC  
Streetwise Media, Inc.  
Tatler Publishing Company Limited  
Televogue Limited  
The Birmingham News Company  
The Birmingham News LLC  
The Condé Nast Publications Limited  
The Evening Journal Association  
The Grand Rapids Press Publishing  
Company LLC  
The Herald Publishing Company,  
LLC  
Advance Central Services Michigan  
Advance Central Services  
Syracuse  
MLive Media Group  
Syracuse Media Group  
The Hillsboro Argus Inc.  
The Huntsville Times Co. Inc.

The Jersey Journal LLC  
The Mobile Press Register, Inc.  
The Mobile Press Register, LLC  
The Muskegon Chronicle Publishing  
Company LLC  
The Northeast Ohio Media Group  
LLC  
The Oregonian Publishing Company  
LLC  
Advance Central Services  
Oregon  
Oregonian Media Group  
The Oregonian Publishing Properties  
LLC  
The Patriot-News Co.  
Advance Central Services  
Pennsylvania  
PA Media Group  
The Patriot-News LLC  
The Plain Dealer LLC  
The Post-Standard LLC  
The Republican Company  
The Star-Ledger LLC  
The Times of Trenton LLC  
The Times of Trenton Publishing  
Corporation  
The Times-Picayune, L.L.C.  
NOLA Media Group  
Advance Central Services  
Louisiana  
Two Coasts Productions LLC  
Valley Publishing  
Videovogue Limited  
Vogue Design Limited  
Vogue Model Agency Limited  
Vogue Studio Limited  
Wine & Food Publications Ltd.  
Woodthorn Economic Consultants  
LLC  
Ziplist, Inc.

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

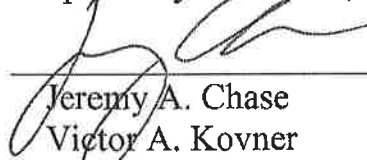
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF  
AMERICAN SOCIETY OF NEWS EDITORS**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* American Society of News Editors certifies that it has no parent, subsidiary, or affiliate companies.

Dated: June 14, 2016

Respectfully Submitted,



Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

DAVIS WRIGHT TREMAINE LLP

1251 Avenue of the Americas

21st Floor

New York, NY 10020

Tel.: (212) 489-8230

Fax: (212) 489-8340

*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

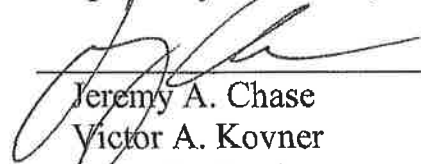
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT**  
**OF THE ASSOCIATED PRESS, INC.**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* The Associated Press, Inc. certifies that it has no parent, subsidiary or affiliate companies.

Dated: June 14, 2016

Respectfully Submitted,



Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

DAVIS WRIGHT TREMAINE LLP

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21st Floor

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*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

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JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

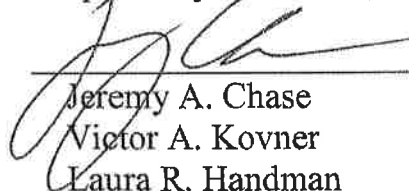
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF  
ASSOCIATION OF ALTERNATIVE NEWSMEDIA**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Association of Alternative Newsmedia certifies that it has no parent, subsidiary, or affiliate companies.

Dated: June 14, 2016

Respectfully Submitted,



Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

DAVIS WRIGHT TREMAINE LLP

1251 Avenue of the Americas

21st Floor

New York, NY 10020

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*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

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In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

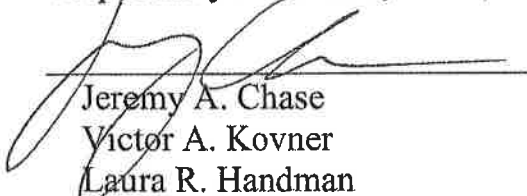
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF  
ASSOCIATION OF AMERICAN PUBLISHERS, INC.**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Association of American Publishers, Inc. certifies that it is a non-profit organization that has no parent corporation and issues no stock.

Dated: June 14, 2016

Respectfully Submitted,

  
\_\_\_\_\_  
Jeremy A. Chase  
Victor A. Kovner  
Laura R. Handman

DAVIS WRIGHT TREMAINE LLP  
1251 Avenue of the Americas  
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*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

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In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

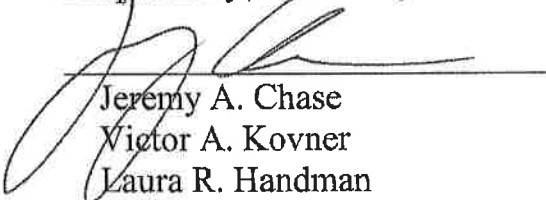
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT  
OF DAILY NEWS, LP**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Daily News, L.P. certifies it is a limited partnership, the general partner of which is New DN Company, a privately-held corporation. Daily News, L.P. has no parent, subsidiary, or affiliate companies.

Dated: June 14, 2016

Respectfully Submitted,

  
\_\_\_\_\_  
Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

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*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

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In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

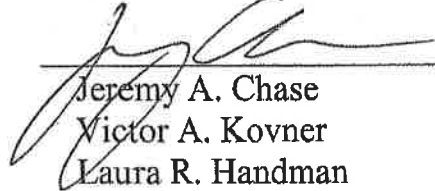
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT  
OF THE E.W. SCRIPPS COMPANY**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* The E.W. Scripps Company ("Scripps") certifies that it has no parent company. Its affiliates are Scripps Media, Inc., which is the FCC licensee of WKBW-TV in Buffalo, along with 32 other local broadcast stations and their affiliated websites, as well as 34 radio stations in 8 markets. Scripps also owns the Scripps National Spelling Bee, Inc., United Feature Syndicate, Inc., and Journal Holdings, Inc.

Dated: June 14, 2016

Respectfully Submitted,



---

Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

DAVIS WRIGHT TREMAINE LLP

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*Counsel of Record for Amici Curiae*



STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

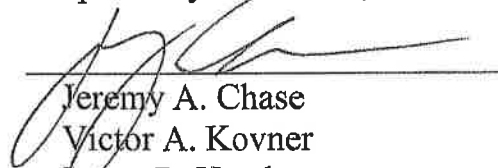
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT  
OF FIRST LOOK MEDIA WORKS, INC.**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* First Look Media Works, Inc. certifies that it is a non-profit corporation affiliated with First Look Productions, Inc. and First Look Services, Inc. It does not have a parent or any subsidiary companies.

Dated: June 14, 2016

Respectfully Submitted,

  
\_\_\_\_\_  
Jeremy A. Chase  
Victor A. Kovner  
Laura R. Handman

DAVIS WRIGHT TREMAINE LLP  
1251 Avenue of the Americas  
21st Floor  
New York, NY 10020  
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*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.

APL 2016-00072

Nassau County Clerk's

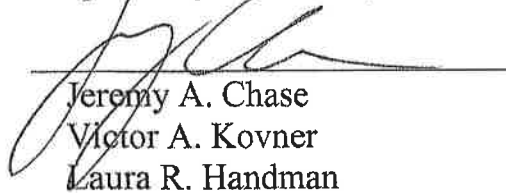
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT  
OF GAWKER MEDIA LLC**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Gawker Media LLC certifies that it is wholly owned by Gawker Media Group, Inc., a privately held company. No publicly held corporation holds an interest of 10% or more in Gawker Media LLC.

Dated: June 14, 2016

Respectfully Submitted,



Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

DAVIS WRIGHT TREMAINE LLP

1251 Avenue of the Americas

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New York, NY 10020

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Fax: (212) 489-8340

*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

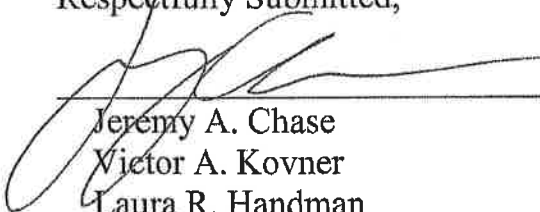
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT**  
**OF HEARST CORPORATION**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Hearst Corporation ("Hearst") certifies that it is privately held by the Hearst Family Trust and has no other parent. Hearst has no publicly-traded subsidiaries or affiliates

Dated: June 14, 2016

Respectfully Submitted,

  
\_\_\_\_\_  
Jeremy A. Chase  
Victor A. Kovner  
Laura R. Handman

DAVIS WRIGHT TREMAINE LLP  
1251 Avenue of the Americas  
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New York, NY 10020  
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*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF INVESTIGATIVE  
REPORTING WORKSHOP AT AMERICAN UNIVERSITY**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Investigative Reporting Workshop at American University certifies it is a non-profit organization affiliated with the American University School of Communication in Washington. It issues no stock.

Dated: June 14, 2016

Respectfully Submitted,

  
\_\_\_\_\_  
Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

DAVIS WRIGHT TREMAINE LLP

1251 Avenue of the Americas

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New York, NY 10020

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Fax: (212) 489-8340

*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

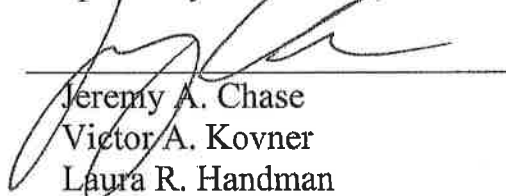
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF MPA – THE  
ASSOCIATION OF MAGAZINE MEDIA**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* MPA – The Association of Magazine Media certifies that it has no parent companies, and no publicly held company owns more than 10% of its stock.

Dated: June 14, 2016

Respectfully Submitted,



Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

DAVIS WRIGHT TREMAINE LLP

1251 Avenue of the Americas

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New York, NY 10020

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Fax: (212) 489-8340

*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

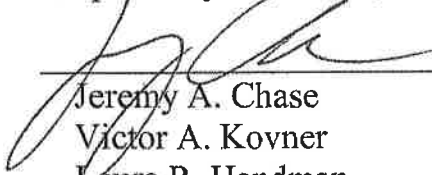
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF  
NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* National Press Photographers Association certifies that it is a 501(c)(6) nonprofit organization with no parent company.

Dated: June 14, 2016

Respectfully Submitted,



Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

DAVIS WRIGHT TREMAINE LLP

1251 Avenue of the Americas

21st Floor

New York, NY 10020

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Fax: (212) 489-8340

*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

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In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

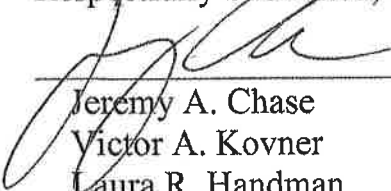
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF  
THE NEW YORK TIMES COMPANY**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* The New York Times Company certifies that it is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company owns 10% or more of its stock.

Dated: June 14, 2016

Respectfully Submitted,

  
\_\_\_\_\_  
Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

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*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
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DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

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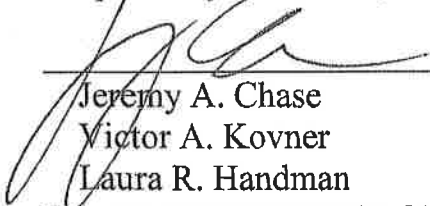
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT  
OF NEWSDAY LLC**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Newsday LLC ("Newsday") certifies that a listing of Newsday's parents, subsidiaries and affiliates is annexed as Exhibit A.

Dated: June 14, 2016

Respectfully Submitted,

  
\_\_\_\_\_  
Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

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21st Floor

New York, NY 10020

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Fax: (212) 489-8340

*Counsel of Record for Amici Curiae*



**EXHIBIT A**  
**Newsday LLC**

- **Parent:** CSC Holdings, LLC, which in turn is a subsidiary of Cablevision Systems Corporation, a publicly held company.

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
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APL 2016-00072

Nassau County Clerk's

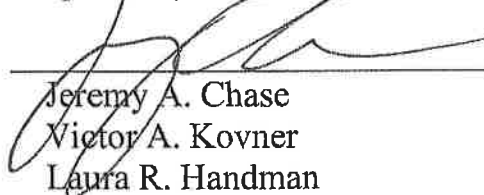
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT**  
**OF NORTH JERSEY MEDIA GROUP INC.**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* North Jersey Media Group Inc. ("NJMG") certifies that a listing of NJMG's parents, subsidiaries and affiliates is annexed as Exhibit A.

Dated: June 14, 2016

Respectfully Submitted,



Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

DAVIS WRIGHT TREMAINE LLP

1251 Avenue of the Americas

21st Floor

New York, NY 10020

Tel.: (212) 489-8230

Fax: (212) 489-8340

*Counsel of Record for Amici Curiae*

**EXHIBIT A**  
**North Jersey Media Group, Inc.**

- **Parent:** North Jersey Media Group Inc. is a privately held company owned solely by Macromedia Incorporated, also a privately held company.
- **Affiliates:** Bergen Record Corporation, The Bergen Evening Record Corporation, Gateway Communications, Inc., Macromedia Leasing Corporation, and Magna Media, Inc.

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
DISTRICT ATTORNEY,

Respondent-Respondent.  
----- x

APL 2016-00072

Nassau County Clerk's

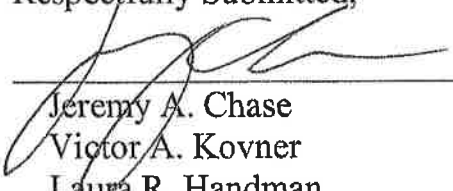
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT**  
**OF ONLINE NEWS ASSOCIATION**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Online News Association certifies that it is a non-profit corporation and has no parent, subsidiaries, or affiliates.

Dated: June 14, 2016

Respectfully Submitted,

  
\_\_\_\_\_  
Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

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*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

----- x  
In the Matter of

JESSE FRIEDMAN,

Petitioner-Appellant,

- against -

KATHLEEN RICE, in her official  
capacity as the NASSAU COUNTY  
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Respondent-Respondent.  
----- x

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Nassau County Clerk's

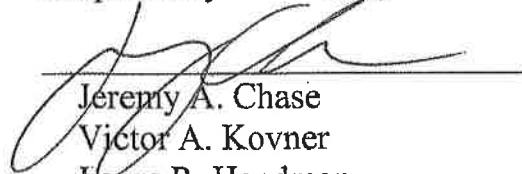
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF  
SOCIETY OF PROFESSIONAL JOURNALISTS**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Society of Professional Journalists certifies that it is a non-profit corporation and has no parent or subsidiaries.

Dated: June 14, 2016

Respectfully Submitted,



Jeremy A. Chase

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Laura R. Handman

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*Counsel of Record for Amici Curiae*

STATE OF NEW YORK  
COURT OF APPEALS

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In the Matter of

JESSE FRIEDMAN,

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APL 2016-00072

Nassau County Clerk's

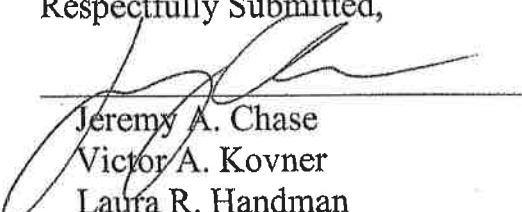
Index No. 4015/13

**CORPORATE DISCLOSURE STATEMENT OF  
TULLY CENTER FOR FREE SPEECH**

Pursuant to Section 500.1(f) of the Rules of Practice for this Court, the undersigned counsel for *Amicus Curiae* Tully Center for Free Speech certifies that it is a subsidiary of Syracuse University.

Dated: June 14, 2016

Respectfully Submitted,

  
\_\_\_\_\_  
Jeremy A. Chase

Victor A. Kovner

Laura R. Handman

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