SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

PROJECT VERITAS, *Plaintiff-Respondent*, v. THE NEW YORK TIMES COMPANY, *Defendant-Appellant*, and MAGGIE ASTOR, TIFFANY HSU, and JOHN DOES 1-5, *Defendants*.	:	Appellate Division Case No. 2021-09551 Westchester County Index No. 63921/2020 **ORDER TO SHOW CAUSE** **(On Consent)**

Upon the annexed affirmation of Alison Schary, counsel of record for the Reporters Committee for Freedom of the Press and proposed amici curiae, dated January 12, 2022, and all exhibits attached thereto, including a copy of the proposed brief of amici curiae,

LET Plaintiff-Respondent, Project Veritas, and Defendant-Appellant, The New York Times Company, by their attorneys, show cause before this court, on the ___ day of January, 2022, at 9:30 a.m., or as soon thereafter as the matter may be heard, why an Order should not be made and entered herein, on consent:

1. Granting the Reporters Committee for Freedom of the Press and proposed amici curiae leave to file the amicus brief attached hereto, pursuant to Uniform Appellate Division Rule 1250.4(f) [22 N.Y.C.R.R. § 1250.4(f)]; and

2. Granting such other and further relief as the court may seem just and equitable.

Sufficient cause therefore appearing, it is:

Ordered that service of a copy of this order to show cause and the papers upon which it is made upon counsel for each of Plaintiff-Respondent and Defendant-Appellant by personal delivery, office delivery, overnight delivery service, or email, and by uploading this order to show cause to NYSCEF under the Appellate Division module, on or before January __ , 2022, shall be deemed sufficient service thereof.

Dated: Brooklyn, New York
January ____, 2022

_____

Associate Justice
Appellate Division, 2d Dep't

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

PROJECT VERITAS, *Plaintiff-Respondent*, v. THE NEW YORK TIMES COMPANY, *Defendant-Appellant*, and MAGGIE ASTOR, TIFFANY HSU, and JOHN DOES 1-5, *Defendants*.	:	Appellate Division Case No. 2021-09551 Westchester County Index No. 63921/2020 **AFFIRMATION**

ALISON SCHARY, an attorney duly admitted to practice law before the courts of the State of New York, and not a party to the above-titled cause, affirms the following to be true under penalty of perjury pursuant to CPLR § 2106:

1. I am counsel at Davis Wright Tremaine LLP and am counsel of record in this matter for the proposed amici curiae listed below, who respectfully move the Court for leave to file the accompanying amicus curiae brief in support of Defendant-Appellant. I am based in Davis Wright Tremaine's Washington, D.C. office, located at 1301 K Street NW, Suite 500 East, Washington D.C., 20005.

Davis Wright Tremaine's New York office is located at 1251 Avenue of the Americas, 21st Floor, New York, NY 10020.

2. The proposed brief of amici curiae, a true and correct copy of which is attached hereto as **Exhibit A**, explains that the restrictions imposed by the Order to Show Cause violate the First Amendment. The proposed brief of amici curiae also emphasizes that permitting litigants to obtain orders restraining the speech of news organizations in the manner contemplated by the Order to Show Cause would harm news organizations' ability to publish journalism of public interest.

3. Lead amicus, the Reporters Committee for Freedom of the Press (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 seeking to reveal the identities of confidential news sources, the Reporters Committee works to protect First Amendment freedoms and the newsgathering rights of journalists. The Reporters Committee frequently serves as amicus curiae in cases that concern issues of importance to journalists and news media. *See, e.g.*, Brief of Amici Curiae the Reporters Committee for Freedom of the Press and 20 Media Organizations in Support of Defendants-Respondents, *Rainbow v. WPIX, Inc*., No. 2018-05119 (1st Dep't Oct. 2, 2019), *available at* https://perma.cc/5S3H-SLT7; Amicus Brief on Behalf of the Reporters Committee for Freedom of the Press, *et al*., in Support of

Defendants-Appellants, *VIP Pet Grooming Studio, Inc. v. Sproule*, No. 2021-04228 (2d Dep't Oct. 25, 2021), *available at* https://perma.cc/6VZA-DVJ8.

4. Additional proposed amici curiae are 63 prominent news publishers, professional and advocacy organizations, and trade groups.[1] As organizations devoted to defending First Amendment freedoms, including the rights of journalists and media organizations to gather and publish newsworthy information, amici are uniquely positioned to address these issues. Such arguments, which are not duplicative of those of Defendant-Appellant, will aid the Court in ruling on the appeal pending before it.

5. No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. And no person other than amici, their members, and their counsel contributed money that was intended to fund preparing or submitting this brief.

6. The parties consent to the filing of the proposed brief of amici curiae.

WHEREFORE, I respectfully request that this Court grant amici leave to file a brief as amici curiae in support of Defendant-Appellant, a copy of which is attached hereto as **Exhibit A**.

---

[1] A comprehensive list of amici is annexed hereto as Appendix A.

Dated: January 12, 2022
Washington, D.C.

by: 

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** *Pro Hac Vic Admission Forthcoming*

Counsel for Proposed Amici Curiae

APPENDIX A: DESCRIPTION OF ADDITIONAL *AMICI CURIAE*

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

American Broadcasting Companies, Inc. is a broad-based communications company. Alone or through its subsidiaries, it owns ABC News, abcnews.com, and local broadcast television stations that regularly gather and report news to the public. ABC News produces the television programs *World News with David Muir*, *Good Morning America*, *Nightline*, *20/20*, and *This Week*, among others.

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.

Bloomberg L.P. is the owner and operator of **Bloomberg News**. Bloomberg's newsroom of more than 2,700 journalists and analysts delivers thousands of stories a day, producing content that is featured across multiple platforms, including digital, TV, radio, print and live events.

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

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

Californians Aware is a nonpartisan nonprofit corporation organized under the laws of California and eligible for tax exempt contributions as a 501(c)(3) charity pursuant to the Internal Revenue Code. Its mission is to foster the improvement of, compliance with and public understanding and use of, the California Public

Records Act and other guarantees of the public's rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss.

CBS Broadcasting Inc. produces and broadcasts news, public affairs and entertainment programming. Its CBS News Division produces morning, evening and weekend news programming, as well as news and public affairs newsmagazine programs, such as "60 Minutes" and "48 Hours." CBS Broadcasting Inc. also directly owns and operates television stations across the country, including WCBS-TV in New York City, which produces daily news programming.

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

The Committee to Protect Journalists is an independent, nonprofit organization that promotes press freedom worldwide. We defend the right of journalists to report the news without fear of reprisal. CPJ is made up of about 40 experts around the world, with headquarters in New York City. A board of prominent journalists from around the world helps guide CPJ's activities.

Courthouse News Service is a California-based legal news service that publishes a daily news website with a focus on politics and law. The news service also publishes daily reports on new civil actions and appellate rulings in both state and federal courts throughout the nation. Subscribers to the daily reports include law firms, universities, corporations, governmental institutions, and a wide range of media including newspapers, television stations and cable news services.

The Daily Beast delivers award-winning original reporting and sharp opinion from big personalities in the arenas of politics, pop-culture, world news and more.

Daily News, LP publishes the New York Daily News, a daily newspaper that serves primarily the New York City metropolitan area and is one of the largest papers in the country by circulation. The Daily News' website, NYDailyNews.com, receives approximately 100 million page views each month.

Dotdash Meredith Inc. is the largest digital and print publisher in America. From mobile to magazines, nearly 200 million people trust Dotdash Meredith to help them make decisions, take action, and find inspiration. Dotdash Meredith's over 40 iconic brands include PEOPLE, Better Homes & Gardens, Verywell, FOOD & WINE, The Spruce, Allrecipes, Byrdie, REAL SIMPLE, Investopedia, and Southern Living. Dotdash Meredith is based in New York City and is an operating business of IAC (NASDAQ: IAC).

Dow Jones & Company is the world's leading provider of news and business information. Through The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and its other publications, Dow Jones has produced journalism of unrivaled quality for more than 130 years and today has one of the world's largest newsgathering operations. Dow Jones's professional information services, including the Factiva news database and Dow Jones Risk & Compliance, ensure that businesses worldwide have the data and facts they need to make intelligent decisions. Dow Jones is a News Corp company.

The E.W. Scripps Company is the nation's fourth-largest local TV broadcaster, operating a portfolio of 61 stations in 41 markets. Scripps also owns Scripps Networks, which reaches nearly every American through the national news outlets Court TV and Newsy and popular entertainment brands ION, Bounce, Grit, Laff and Court TV Mystery. The company also runs an award-winning investigative reporting newsroom in Washington, D.C., and is the longtime steward of the Scripps National Spelling Bee.

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

First Look Institute, Inc. is a non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting. First Look Institute operates the Press Freedom Defense Fund, which provides essential legal support for journalists, news organizations, and whistleblowers who are targeted by powerful figures because they have tried to bring to light information that is in the public interest and necessary for a functioning democracy.

Forbes Media LLC is the publisher of Forbes Magazine as well as an array of investment newsletters and the leading business news website, Forbes.com. Forbes has been covering American and global business since 1917.

Free Press is a national, nonpartisan, non-profit organization with approximately 1.5 million members in the United States and around the world. It works to defend Internet freedom and press freedom, including the right of journalists and others to gather and report on information as well as the public's right to see, hear and read that information — both of which are crucial to a functioning democracy. Free Press has participated in numerous court and agency proceedings on media, telecommunications, and technology law topics, including those involving First Amendment issues, since the organization's founding in 2003.

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.

Fundamedios Inc. is a non-profit organization advocating for Spanish-speaking journalists in the United States and Latin America. The multidisciplinary organization monitors threats to Spanish-speaking journalists' safety, to their ability to gather and report the news, and to freedom of expression across the continent. Fundamedios Inc. was founded in 2007 by renown Ecuadorian journalist Cesar Ricaurte and has offices in Washington, D.C., and Quito, Ecuador.

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

Hearst is one of the nation's largest diversified media, information and services companies with more than 360 businesses. Its major interests include ownership of 15 daily and more than 30 weekly newspapers, including the San Francisco Chronicle, Houston Chronicle, and Albany Times Union; hundreds of magazines around the world, including Cosmopolitan, Good Housekeeping, ELLE, Harper's BAZAAR and O, The Oprah Magazine; 31 television stations such as KCRA-TV in Sacramento, Calif. and KSBW-TV in Monterey/Salinas, CA, which reach a

combined 19 percent of U.S. viewers; ownership in leading cable television networks such as A&E, HISTORY, Lifetime and ESPN; global ratings agency Fitch Group; Hearst Health; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

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

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

The Investigative Reporting Workshop, based at 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.

Los Angeles Times Communications LLC is one of the largest daily newspapers in the United States. Its popular news and information website, www.latimes.com, attracts audiences throughout California and across the nation.

The McClatchy Company, LLC is a publisher of iconic brands such as the *Miami Herald*, *The Kansas City Star*, *The Sacramento Bee*, *The Charlotte Observer*, *The* (Raleigh) *News & Observer*, and the *Fort Worth Star-Telegram*. McClatchy operates media companies in 30 U.S. markets in 16 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, California.

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

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

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

MPA – The Association of Magazine Media ("MPA") is the industry association for magazine media publishers. The MPA, established in 1919, represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands. MPA's membership creates professionally researched and edited content across all print and digital media on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

National Newspaper Association is a 2,000 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, FL.

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.

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

New England First Amendment Coalition is a non-profit organization working in the six New England states to defend, promote and expand public access to government and the work it does. The coalition is a broad-based organization of people who believe in the power of transparency in a democratic society. Its members include lawyers, journalists, historians and academicians, as well as private citizens and organizations whose core beliefs include the principles of the First Amendment. The coalition aspires to advance and protect the five freedoms of the First Amendment, and the principle of the public's right to know in our region. In collaboration with other like-minded advocacy organizations, NEFAC also seeks to advance understanding of the First Amendment across the nation and freedom of speech and press issues around the world.

New England Newspaper and Press Association, Inc. ("NENPA") is the regional association for newspapers in the six New England States (including Massachusetts). NENPA's corporate office is in Dedham, Massachusetts. Its purpose is to promote the common interests of newspapers published in New England. Consistent with its purposes, NENPA is committed to preserving and ensuring the open and free publication of news and events in an open society.

New York Magazine covers, analyzes, comments on, and defines the news, politics, culture, entertainment, lifestyle, fashion, and personalities that drive New York City. New York Magazine, founded in April 1968, reaches 1.87 million readers each week.

The New Yorker is an award-winning magazine of general interest, published weekly in print, digital, and online. Its writers regularly use information provided by sources, confidential and non-confidential, to report on matters of state, national, and international importance.

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.

Newsday LLC ("Newsday") is the publisher of the daily newspaper, Newsday, and related news websites. Newsday is one of the nation's largest daily newspapers, serving Long Island through its portfolio of print and digital products. Newsday has received 19 Pulitzer Prizes and other esteemed awards for outstanding journalism.

The News Guild-CWA is a labor organization representing more than 25,000 employees of newspapers, newsmagazines, news services
and other media enterprises. Guild representation comprises, in the main, the

editorial and online departments of these media outlets. The News Guild is a sector of the Communications Workers of America. CWA is America's largest communications and media union, representing over 500,000 men and women in both private and public sectors.

The Online News Association is the world's largest association of digital journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

Open Vallejo is an award-winning, independent, non-partisan, nonprofit newsroom serving the public interest. Open Vallejo seeks to illuminate a small city long burdened by police violence, neglect, and corruption. As the first project of the Informed California Foundation, Open Vallejo is also a permanent design laboratory for open source, high-impact, broadly-accessible frameworks for ensuring local transparency, accountability, and information justice.

POLITICO is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to nearly 300 reporters, editors and producers. It distributes 30,000 copies of its Washington newspaper on each publishing day and attracts an influential global audience of more than 35 million monthly unique visitors across its various platforms.

ProPublica is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer Prizes, most recently a 2020 prize for national reporting, the 2019 prize for feature writing, and the 2017 gold medal for public service. ProPublica is supported almost entirely by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations selected for maximum impact. ProPublica has extensive regional and local operations, including ProPublica Illinois, which began publishing in late 2017 and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer Prize for Local Reporting, an initiative with the Texas Tribune, which launched in March 2020, and a series of Local Reporting Network partnerships.

Pulitzer Center on Crisis Reporting, based in Washington, DC, was founded in 2006 as a non-profit journalism center dedicated to supporting in-depth

engagement with underreported global affairs through sponsorship of quality international journalism across all media platforms and a unique program of outreach and education to schools and universities. The Center supports over 150 international reporting projects each year, working in tandem with major international news outlets.

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

Reuters, the news and media division of Thomson Reuters, is the world's largest multimedia news provider. Founded in 1851, it is committed to the Trust Principles of independence, integrity and freedom from bias. With unmatched coverage in over 16 languages, and reaching billions of people worldwide every day, Reuters provides trusted intelligence that powers humans and machines to make smart decisions. It supplies business, financial, national and international news to professionals via desktop terminals, the world's media organizations, industry events and directly to consumers.

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

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.

Student Press Law Center ("SPLC") is a nonprofit, nonpartisan organization which, since 1974, has been the nation's only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First Amendment to the Constitution of the United States. SPLC provides free legal assistance, information and educational materials for student journalists on a variety of legal topics.

TIME is a global multimedia brand that reaches a combined audience of more than 100 million around the world. TIME's major franchises include the TIME 100

Most Influential People, Person of the Year, Firsts, Best Inventions, Genius Companies, World's Greatest Places and more. With 45 million digital visitors each month and 40 million social media followers, TIME is one of the most trusted and recognized sources of news and information in the world.

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

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

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

The Washington Post (formally, WP Company LLC d/b/a The Washington Post) is a news organization based in Washington, D.C. It publishes The Washington Post newspaper and the website www.washingtonpost.com, and produces a variety of digital and mobile news applications. The Post has won Pulitzer Prizes for its journalism, including the award in 2020 for explanatory reporting.

WNET is the parent company of New York's THIRTEEN – America's flagship PBS station – WLIW21, THIRTEEN PBSKids, WLIW World and Create; Long Island's only NPR station WLIW-FM; and ALL ARTS, the arts and culture media provider. WNET also operates NJ PBS, New Jersey's statewide public television network, and newsroom NJ Spotlight News. Through these channels and streaming platforms, WNET brings arts, culture, education, news, documentary, entertainment, and DIY programming to more than five million viewers each month. WNET's award-winning productions include signature PBS series *Nature*, *Great Performances*, *American Masters*, *PBS NewsHour Weekend*, and *Amanpour and Company* and trusted local news programs *MetroFocus* and *NJ Spotlight News with Briana Vannozzi*.

Vox Media, LLC owns New York Magazine and several web sites, including Vox, The Verge, The Cut, Vulture, SB Nation, and Eater, with 170 million unique monthly visitors.

EXHIBIT A

New York Supreme Court

APPELLATE DIVISION—SECOND DEPARTMENT

PROJECT VERITAS,

Plaintiff-Respondent,

—against—

THE NEW YORK TIMES COMPANY, MAGGIE ASTOR and TIFFANY HSU,

Defendants-Appellants,

—and—

JOHN DOES 1-5,

Defendants.

DOCKET NO. 2021-09551

BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 63 MEDIA ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT THE NEW YORK TIMES COMPANY

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Attorneys for Amici Curiae The Reporters Committee for Freedom of the Press and 63 Media Organizations

Westchester County Clerk's Index No. 63921/20

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae ("amici") are the Reporters Committee for Freedom of the Press ("Reporters Committee"), Advance Publications, Inc., American Broadcasting Companies, Inc., The Associated Press, Bloomberg News, Boston Globe Media Partners, LLC, BuzzFeed, Californians Aware, CBS Broadcasting Inc., The Center for Investigative Reporting (d/b/a Reveal), Committee to Protect Journalists, Courthouse News Service, The Daily Beast Company LLC, Daily News, LP, Dotdash Meredith Inc., Dow Jones & Company, The E.W. Scripps Company, First Amendment Coalition, First Look Institute, Inc., Forbes Media LLC, Free Press, Freedom of the Press Foundation, Fundamedios Inc., Gannett Co., Inc., Hearst Corporation, Inter American Press Association, International Documentary Assn., Investigative Reporting Workshop at American University, Los Angeles Times Communications LLC, The McClatchy Company, LLC, The Media Institute, Media Law Resource Center, Mother Jones, MPA - The Association of Magazine Media, National Newspaper Association, National Press Club Journalism Institute, The National Press Club, National Press Photographers Association, NBCUniversal Media, LLC, New England First Amendment Coalition, New England Newspaper and Press Association, Inc., New York Magazine, The New Yorker, The News Leaders Association, News Media Alliance, Newsday LLC, The NewsGuild - CWA, Online News Association, Open

Vallejo, POLITICO LLC, ProPublica, Pulitzer Center on Crisis Reporting, Radio Television Digital News Association, Reuters News & Media Inc., The Seattle Times Company, Society of Environmental Journalists, Student Press Law Center, TIME USA, LLC, Tribune Publishing Company, Tully Center for Free Speech, Vice Media Group, Vox Media LLC, The Washington Post, and WNET.

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. Other amici are prominent news publishers, professional and advocacy organizations, and trade groups. A supplemental statement of the identity and interest of the amici is included as Appendix A.[1]

As organizations devoted to defending First Amendment freedoms, including the rights of journalists and media organizations to gather and publish newsworthy information, amici are uniquely positioned to address the issues presented by the lower court's Decision, including the unconstitutionality of the

[1] No counsel for a party authored this brief in whole or part, nor did any person or entity, other than amici or their counsel, contribute money toward preparing or submitting this brief.

prior restraint it imposed. *See* Decision & Order (the "Decision"), *Project Veritas v. The New York Times Co*., Index No. 63921/2020 (Sup. Ct. Westchester Cty. filed Dec. 27, 2021). Amici would directly feel the harmful effects of the Decision, which risks enabling anyone who dislikes reporting to censor it—despite its accuracy—by obtaining a protective order in litigation unrelated to that reporting. Moreover, allowing the Decision to stand would endanger the ability of amici and their members to engage in robust newsgathering and reporting based on attorney-client privileged documents, which have long been a source of information of critical importance to the public.

SUMMARY OF ARGUMENT

For two months the New York Times ("the Times") has been restrained by court order—under threat of contempt—from disseminating or reporting on newsworthy material that is unrelated to the underlying defamation case in which the restraint was imposed, will play no role in that case, and was obtained through everyday newsgathering entirely outside of the discovery process. In its Decision below, the lower court further ordered the Times to relinquish possession of this material, destroy any electronic copies, and refrain from disseminating the material to any person. As such, the Decision is not just an unconstitutional prior restraint on speech, it also threatens to convert the judiciary's authority to manage discovery into a potent means to suppress public interest newsgathering and reporting.

As the lower court acknowledged, no case is "on all fours" with this one. *See* Decision at 23. That is because no court—correctly so—has recognized an attorney-client privilege exception to the "heavy presumption against [the] constitutional validity" of prior restraints on protected speech. *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam) (the "*Pentagon Papers*" case) (internal citations and quotations marks omitted). Courts can manage the discovery process by granting, for instance, an order limiting the dissemination of material obtained through discovery. But if a party obtains that same material outside the discovery process, an injunction prohibiting public dissemination would plainly violate the presumption against prior restraints. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34 (1984) (protective order does not violate First Amendment where it is limited to publication of material obtained in discovery, since the "party may disseminate the identical information covered by the protective order as long as the information is gained through means independent of the court's processes").

Prior restraints against lawful speech, like the one at issue in this case, have been roundly rejected by the U.S. Supreme Court. *See Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) ("Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights."); *Near v. Minnesota*, 283 U.S. 697, 713 (1931) ("[T]he chief purpose of the guaranty [of the

liberty of the press is] to prevent previous restraints upon publication."). A prior restraint barring a news organization from publishing newsworthy information poses a grave danger not just to the Times, but to all members of the press—and by extension the public—for at least three reasons.

First, the lower court's purported 'attorney-client privilege exception' to the First Amendment prohibition on prior restraints would invite companies, organizations, and individuals to drag into court a news organization whose coverage they perceive as unfavorable and then hijack the discovery process to suppress that coverage. Not only would such behavior chill news reporting in the public interest, but also it would impermissibly expand judges' legitimate power to supervise discovery into a means for plaintiffs to directly stifle public discourse. *See Rodgers v. U.S. Steel Corp.*, 508 F.2d 152, 163 (3d Cir. 1975) ("Whatever may be the limits of a court's powers [with respect to the 'proper administration of justice'], it seems clear that they diminish in strength as the expressions and associations sought to be controlled move from the courtroom to the outside world.").

Second, the Decision improperly employs a "public concern" analysis that substitutes the court's judgment for that of editors and limits the presumption against prior restraint only to materials deemed by the court to be of "public concern." But the heavy presumption against prior restraints has never turned on

whether the information restrained is of "public concern." To the contrary, the Supreme Court has long recognized that permitting the state to "freeze[]" *any* lawful speech before it occurs is uniquely dangerous. *Neb. Press Ass'n*, 427 U.S. at 559. While the damage of a prior restraint "can be particularly great" when it falls on newsworthy information, *id.*, "*any* prior restraint on expression" carries a heavy presumption against its constitutionality, *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971) (emphasis added). Further, the court's "public concern" analysis purports to override the publisher's editorial judgment. *See Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) ("The choice of material to go into a newspaper . . . constitute[s] the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time."); *see also Huggins v. Moore*, 94 N.Y.2d 296, 303 (1999) ("Absent clear abuse, the courts will not second-guess editorial decisions as to what constitutes matters of genuine public concern."). But even if some "public concern" test were applied, the Times's reporting would easily satisfy it, given that the article at issue addressed the FBI's searches of Project Veritas's founder and associates in its investigation of the alleged theft of President Biden's daughter's diary, which has generated an enormous amount of public interest. The court's deeply flawed "public concern" analysis would censor from public discourse vast

amounts of news coverage that the public is entitled to receive through the journalistic outlets of their choice.

Third, the lower court presumes that attorney-client privileged material is categorically "not fodder for public consideration and consumption." Decision at 24 ("A client seeking advice from its counsel simply cannot be a subject of general interest and value and concern to the public."). Such a categorical rule, if upheld, would change the face of journalism in this country by silencing important news investigations for no other reason than the fact that they rely on communications between attorneys and clients that a journalist acquires via routine newsgathering.

For all these reasons, amici respectfully urge the Court to immediately vacate the Decision in its entirety (save the provision granting leave to file an amicus curiae brief).

ARGUMENT

I. The Decision, if upheld, would create a powerful incentive for litigants to bring frivolous suits in order to suppress news reporting they perceive as unfavorable.

In addition to requiring the Times to return and destroy the memoranda at issue, the Decision orders that the memoranda not be "shown, transmitted, or disseminated in any manner to any persons absent written order of this Court." Decision at 28. In other words, the Times "is suppressed and further publication is made punishable as a contempt." *Near*, 283 U.S. at 713. This is a quintessential

prior restraint—"the essence of censorship." *Id.* And the presumption against it is "heavier," and the protections afforded by the Constitution "broader," than for any punishment imposed after the fact. *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975) ("Behind the distinction is a theory deeply etched in our law: a free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand."); *see also Karantinidis v. Karantinidis*, 186 A.D.3d 1502, 1503 (2d Dep't 2020) ("[A]ny imposition of prior restraint, whatever the form, bears a heavy presumption against its constitutional validity, and a party seeking to obtain such a restraint bears a correspondingly heavy burden of demonstrating justification for its imposition." (internal citations and quotation marks omitted)).

The facts of this case starkly illustrate why prior restraints on news reporting are so disfavored. *See CBS, Inc. v. Davis*, 510 U.S. 1315, 1317 (1994) ("Even where questions of allegedly urgent national security or competing constitutional interests are concerned, we have imposed this most extraordinary remedy only where the evil that would result from the reportage is both great and certain and cannot be mitigated by less intrusive measures.") (cleaned up). Here, Project Veritas is using its defamation lawsuit against the Times to obtain a broad order restraining the Times from reporting on materials obtained *independent of that*

lawsuit (in which no discovery has even occurred) and concerning matters that are *unrelated to the allegedly defamatory articles*.

The implications of such a scenario are staggering and clearly inconsistent with the First Amendment. As discussed in more detail in Part III, there are myriad examples of high-profile news reports that relied on privileged information obtained by reporters in the normal course of newsgathering, outside the discovery process—including groundbreaking reports on the Pandora and Panama Papers, internal Facebook practices, and the tobacco industry.

The rule crafted by the lower court here would provide a roadmap for precisely how individuals or organizations could go about suppressing coverage perceived as unfavorable: by suing a news organization and then co-opting the discovery process to secure a protective order against dissemination of unrelated material they claim is subject to an evidentiary privilege, even if it is obtained outside of discovery.

From the perspective of the amici news organizations, a rule that would obstruct newsrooms from continuing to cover organizations or people who are suing them would create an intolerable handicap. Such a rule would also contravene the foundational First Amendment principle that "[o]pen debate and discussion of public issues are vital to our national health" and that "on public questions there should be 'uninhibited, robust, and wide-open' debate." *Pentagon*

Papers, 403 U.S. at 724 (Douglas, J., concurring) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269–70 (1964)).

The notion that a court could restrain news reporting based on attorney-client privileged information, obtained outside of the discovery process, is one that has been squarely and repeatedly rejected with respect to members of the press, *see, e.g.*, *Nicholson v. Keyspan Corp.*, 836 N.Y.S.2d 501 (Sup. Ct. Suffolk Cty. 2007), and with respect to litigants, *cf.*, *Rodgers v. U.S. Steel Corp.*, 536 F.2d 1001, 1006–07 (3d Cir. 1976). It should likewise be rejected here.[2]

II. Whether information is of "public concern" is irrelevant to the prior restraint analysis, and the "public concern" requirement applied by the lower court would impermissibly empower judges to make editorial decisions the First Amendment reserves for editors.

The lower court reasoned that the Decision is not an "impermissible prior restraint" because it decided that the memoranda are not the "public's business." Decision at 24–25. In doing so, the court appears to have interposed a "public concern" test as a prerequisite to the First Amendment presumption against prior restraints. That analysis is flawed in three ways.

First, the Supreme Court has repeatedly held that "*[a]ny* prior restraint on expression comes to th[e] Court" with a heavy presumption against its

[2] To be clear, amici do not discount the importance of the attorney-client privilege to the proper administration of justice, nor do amici dispute that CPLR § 3103(c) permits the imposition of protective orders controlling how privileged material may be used *in litigation itself*. But the lower court here has restrained the Times from reporting on memoranda obtained outside the discovery process, and that is a clear violation of the First Amendment.

constitutional validity, *see Pentagon Papers*, 403 U.S. at 723 (Douglas, J., concurring) (quoting *Org. for a Better Austin*, 402 U.S. at 419) (emphasis added), and it has done so with the express recognition that this bright-line rule may entail trade-offs, *see Tornillo*, 418 U.S. at 256 ("A responsible press is an undoubtedly desirable goal, but press responsibility is not mandated by the Constitution and like many other virtues it cannot be legislated.");[3] *see also Near*, 283 U.S. at 720 ("The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with offic[i]al misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege.").

Indeed, "the caselaw has not clearly articulated whether prior restraints are always, by definition, content-based." *See United States v. Quattrone*, 402 F.3d 304, 309 n.5 (2d Cir. 2005) (invalidating content-based restraint on identifying prospective jurors named in open court, but noting that prior restraints may be impermissible in any case where speech is restrained in advance, irrespective of its

[3] While *Tornillo* involved a Florida statute creating a "right of reply" to a newspaper's editorials, the unanimous Court treated such government-mandated speech as akin to a prior restraint in striking it down. *See id.* ("The Florida statute operates as a command in the same sense as a statute or regulation forbidding appellant to publish specified matter."); *see also id.* at 259 (White, J., concurring) ("According to our accepted jurisprudence, the First Amendment erects a virtually insurmountable barrier between government and the print media so far as government tampering, in advance of publication, with news and editorial content is concerned.").

content); *see also Southeastern Promotions*, 420 U.S. at 553 ("Invariably, the Court has felt obliged to condemn systems in which the exercise of such authority was not bounded by precise and clear standards. . . . Our distaste for censorship—reflecting the natural distaste of a free people—is deep-written in our law."). Concern over "unbridled discretion," *id.*, to restrain speech before it occurs has led the Supreme Court to condemn even informal "system[s] of prior restraint" that purport to regulate *unprotected* speech without safeguards to prevent the suppression of protected speech. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1964). In short, there is no support in the caselaw for the proposition that only a restraint on speech of public concern is subject to a heavy presumption against its constitutionality.

The second deficiency in the lower court's analysis is the reliance on non-prior restraint jurisprudence—particularly government employee speech doctrine—to impose a "public concern" requirement and to define the term.[4] For instance, the lower court cited *Lewis v. Cowen*, 165 F.3d 154 (2d Cir. 1999), for the proposition that "the first issue that the court first must decide is whether the speech at issue addresses a matter of public concern." Decision at 20. But *Lewis*

[4] The lower court also cites *Bartnicki v. Vopper*, 532 U.S. 514 (2001), for the proposition that the "public concern" in the material is relevant to the prior restraint analysis. Decision at 17. That case concerns whether a publisher may be held liable *after* publication for broadcasting a recording that had been illegally obtained in the first instance by someone else, but where the broadcaster acquired the recording lawfully, and the Court held that the publisher could not. *Bartnicki*, 532 U.S. at 528.

involves a federal civil rights claim under 42 U.S.C. § 1983 by the former head of the Connecticut lottery who alleged he was fired *after* refusing to support a change in the lottery. *Lewis*, 165 F.3d at 157–58. In other words, it is not a prior restraint case at all—it involves punishment for speech *after* it has occurred. Additionally, and fundamentally, government employee speech cases employ a balancing test precisely because the equities are unique to that context. *Id.* at 161 ("This weighing . . . is necessitated by the State's dual role as employer and sovereign."); *see also Pickering v. Bd. of Educ.*, 391 U.S. 563, 569 (1968) (noting "conflicting claims of First Amendment protection and the need for orderly school administration in the context of this case"). With respect to the law of prior restraint, almost a century in the making since *Near*, there is no such balancing.

Finally, third, the lower court's public concern analysis, if upheld by this Court, would contravene black-letter law that "[d]etermining what editorial content is of legitimate public interest and concern is a function for editors" and "not the courts." *Gaeta v. New York News, Inc.*, 62 N.Y.2d 340, 349 (1984). Indeed, allowing courts to undertake this editorial role would require them to unilaterally determine what the public should be "privy" to, Decision at 24, and would "make the government the censor of what the people may read and know," *Tornillo*, 418 U.S. at 260 (White, J., concurring).

In any event, the memoranda are plainly of significant, legitimate public interest. The disclosures about Project Veritas made to the Times, the FBI's searches of the organization's founder and associates in the alleged theft of Ashley Biden's diary, and various lawsuits filed by and against Project Veritas are all issues that have generated ongoing public and press attention.[5] *See Snyder v. Phelps*, 562 U.S. 443, 453 (2011) ("Speech deals with matters of public concern when it . . . is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public," and "the arguably inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern." (cleaned up)); *Konikoff v. Prudential Ins. Co. of Am.*, 234 F.3d 92, 102 n.9 (2d Cir. 2000) (observing, under New York law, that "[i]n media cases, the scope of what is 'arguably within the sphere of public

[5] Indeed, Project Veritas's own attorney has stated that the FBI's searches implicated "a newsworthy topic at the very heart of the First Amendment." Motion to Appoint Special Master at 12, *In re Search Warrant Dated Nov. 5, 2021*, No. 21-MAG-10685 (AT) (S.D.N.Y. filed Nov. 10, 2021), https://perma.cc/MCE4-GJUH. And in light of the strong public and media interest in the case, lead amicus the Reporters Committee is presently before the U.S. District Court for the Southern District of New York seeking to unseal the applications for those search warrants. *See* Letter from Reporters Committee in Support of Objections, *In re Search Warrant Dated Nov. 5, 2021* (S.D.N.Y. filed Jan. 5, 2022), https://perma.cc/L2MF-4UQN; *see also, e.g.*, Amy B. Wang & Devlin Barrett, *FBI Searches Project Veritas Associates in Probe Over Diary Purportedly Belonging to Biden's Daughter*, Wash. Post (Nov. 5, 2021), https://perma.cc/DT4S-AGNY; *The FBI's Raid on James O'Keefe*, Wall St. J. (Nov. 18, 2021), https://perma.cc/TU8N-MLZ8; Joseph A. Wulfsohn, *Federal Judge Grants Project Veritas' Request for Third Party to Review James O'Keefe's Phones Seized by FBI*, Fox News (Dec. 8, 2021), https://perma.cc/TY95-K5VH; Lachlan Markay, *Project Veritas Hires Its First Lobbyist After FBI Raids*, Axios (Dec. 6, 2021), https://perma.cc/7D9Y-HHAJ.

concern' has been held to be extraordinarily broad with great deference paid to what the publisher deems to be of public interest," and collecting cases).[6] In sum, the Decision's "public concern" inquiry is irrelevant to the prior restraint analysis and constitutes an impermissible government intrusion into the constitutionally protected editorial process.

III. Categorically excluding attorney-client privileged material from prohibitions against prior restraints would jeopardize significant reporting in the public interest.

There can be no dispute that disclosures of privileged material outside of the discovery process have led to significant, ground-breaking journalism. The lower court's assertion that a "client seeking advice from its counsel simply cannot be a subject of general interest and of value and concern to the public"—and therefore that the publication of all privileged material can be restrained by court order and punished by contempt—would impermissibly chill and restrain such reporting, depriving the public of crucial insight and analysis. Decision at 24.

For example, the 2021 disclosure of the "Pandora Papers" to the International Consortium for Investigative Journalists involved millions of pages of confidential, privileged financial documents from 14 offshore firms. The Pandora

[6] *Snyder*, which concerned whether offensive military funeral picketing could support liability for intentional infliction of emotional distress, is one of the few non-public employee speech cases cited by the court below in defining "public concern." Decision at 21. It again, however, *is not a prior restraint case*—it concerns liability after-the-fact *and* found that such liability could not lie. *Snyder*, 562 U.S. at 458–59.

Papers are still being analyzed, though they have already led to a significant global response, including the introduction of bipartisan legislation in the U.S. Congress to amend the Bank Secrecy Act. *See* Debbie Cenziper et al., *Lawmakers Call for Crackdown on Financial 'Enablers' After Pandora Papers Revelations*, Wash. Post (Oct. 6, 2021), https://perma.cc/D3WE-H3U9.

Similarly, the Panama Papers, disclosed in 2016, were leaked documents from the former Panamanian law firm Mossack Fonseca that revealed, among other things, illegal offshore tax avoidance schemes by wealthy clients around the world. The Panama Papers have had dramatic effects globally over the last five years. The disclosures resulted in more than 300 news articles in fourteen languages. *See* Will Fitzgibbon & Michael Hudson, *Five Years Later, Panama Papers Still Having a Big Impact*, Int'l Consortium of Investigative Journalists (Apr. 3, 2021), https://perma.cc/NAU8-AZMU. It led to the resignation of world leaders. Steven Erlanger et al., *Iceland's Prime Minister Steps Down Amid Panama Papers Scandal*, N.Y. Times (Apr. 5, 2016), https://perma.cc/U5GV-ZRLV. It has, to date, resulted in $1.36 billion worldwide in recouped taxes, fines, and penalties. Fitzgibbon, *supra*. It has sparked legislative reform, including in Panama, which initially sought to downplay the disclosure. *Id.* And, in the United States, it has led to multiple probes and convictions for tax fraud, as well as extensive deliberation in Congress. *Id.*; *see also* Press Release, U.S. Dep't Just.,

U.S. Taxpayer in Panama Papers Investigation Sentenced to Prison (Sept. 21, 2020), https://perma.cc/UC5U-G8NB.

Disclosure of attorney-client privileged documents prompted significant public debate in the mid-1990s over what the large cigarette manufacturers knew about the health risks of their products and whether they kept information about health risks from regulators. In 1994, a paralegal disclosed internal documents from the Brown & Williamson Tobacco Corporation suggesting that company officials "struggled with whether to disclose to the Surgeon General what they knew in 1963 about the hazards of smoking," but "chose to remain silent." *See* Philip J. Hilts, *Tobacco Company Was Silent on Hazards*, N.Y. Times, May 7, 1994, at A1, https://perma.cc/28QA-5LPV. Asked for comment in that Times story, the company "said the documents would not be disclosed because some of them may be subject to attorney-client privilege and may be covered by an injunction forbidding their release." *Id.* The company also proceeded to seek, unsuccessfully, an injunction to compel the University of California, San Francisco, to return a set of the documents sent to a scientist there on the grounds that they were privileged. *See School Wins Right to Display Controversial Tobacco Documents*, Reporters Comm. for Freedom of the Press (July 17, 1995), https://perma.cc/HD8U-RARH. Ultimately, the disclosure of "The Cigarette Papers" led to extensive scholarly and journalistic scrutiny of the hazards of

smoking, as well as unprecedented regulatory action and public debate. *See* Stanton A. Glantz (ed.) et al., The Cigarette Papers (1998).

The list goes on. Extensive disclosures by former Facebook employee Frances Haugen last year about how Facebook controls the content on its platform contained privileged information, and have led to regulatory scrutiny and legislative hearings in multiple countries. Jeff Horwitz, *Facebook Says Its Rules Apply to All. Company Documents Reveal a Secret Elite That's Exempt*, Wall St. J. (Sept. 13, 2021), https://perma.cc/YM8S-VY4C. In 2016, the disclosure of a memorandum marked attorney-client privileged led to widespread reporting on fundraising by the Clinton Foundation. *See, e.g.*, Rosalind S. Helderman & Tom Hamburger, *Inside 'Bill Clinton Inc.': Hacked Memo Reveals Intersection of Charity and Personal Income*, Wash. Post (Oct. 26, 2016), https://perma.cc/HFB3-2BRE; Russell Berman, *The Man at the Center of 'Bill Clinton Inc.'*, Atlantic (Oct. 28, 2016), https://perma.cc/CG7W-TZ7A.

The media must be free to report on material obtained through independent newsgathering, outside the discovery process—regardless of whether that material is privileged. News organizations are frequently the target of lawsuits by powerful people and organizations trying to quash critical reporting about them. The lower court's rule would make such lawsuits even more frequent, and dangerous, by

permitting plaintiffs to impose a wide-ranging gag order on reporting that occurs independent of their lawsuits. The lower court's decision should be vacated.

CONCLUSION

For all these reasons, amici respectfully urge the Court to immediately vacate the Decision in its entirety (except for the provision granting leave to file an amicus curiae brief).

Dated: January 12, 2022
Washington, D.C.

Respectfully submitted,

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PRINTING SPECIFICATIONS STATEMENT

It is hereby certified, pursuant to 22 NYCRR 1250.8(j) that, according to the word count of the word-processing system used to prepare this brief, the total word count for all printed text in the body of the brief exclusive of the material omitted under 22 NYCRR 1250.8(f)(2) is 4,462 words.

This brief was prepared on a computer using:

- Microsoft Word (Version 16.56) for Microsoft 365
- Times New Roman, a proportionally spaced font
- 14-point size font