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**Court of Appeals**  
**State of New York**

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In re Application of  
EMPIRE CENTER FOR NEW YORK STATE POLICY,  
*Petitioner-Appellant,*  
For a Judgment under Article 78 of the Civil Practice Law and Rules  
– against –  
NEW YORK STATE TEACHERS' RETIREMENT SYSTEM,  
*Respondent-Appellee.*  
Albany County Clerk's Index No. 1221/12

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In re Application of  
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*Respondent-Appellee.*  
New York County Clerk's Index No. 102055/12

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**BRIEF OF *AMICI CURIAE* IN SUPPORT OF THE APPEAL OF  
PETITIONER-APPELLANT THE EMPIRE CENTER FOR NEW YORK  
STATE POLICY**

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Jonathan R. Donnellan  
Diego Ibarquen  
HEARST CORPORATION  
Office of General Counsel  
300 West 57 Street, 40<sup>th</sup> Floor, New York, NY 10019  
Tel.: (212) 841-7000  
Fax: (212) 554-7000  
*Attorneys for Amici Curiae*

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF IDENTITY AND INTEREST OF <i>AMICI CURIAE</i> .....	2
CORPORATE DISCLOSURE STATEMENTS OF <i>AMICI CURIAE</i> .....	6
SUMMARY OF ARGUMENT.....	9
ARGUMENT .....	11
Public Policy Behind New York Freedom of Information Law .....	12
Media’s Use of Pensioner Name Data .....	13
The Aftermath of Nondisclosure.....	21
CONCLUSION .....	22

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Capital Newspapers v. Burns</i> , 67 N.Y.2d 562 (1986) .....	13
<i>Empire Center v. NYC Police Pension Fund</i> , 88 A.D.3d 520 (1st Dep’t 2011).....	21
 <b>Other Authorities</b>	
Carl Campanile, “86G Disability Pension for Marathon Man,” <i>available at</i> , <a href="http://www.nypost.com/p/news/local/paid_for_no_wheezin_jbt34b3pBFo4vbmWHn1DGO">http://www.nypost.com/p/news/local/paid_for_no_wheezin_jbt34b3pBFo4vbmWHn1DGO</a> (July 6, 2010).....	14
Chuck Bennett, “Cop pensions stay undercover: court,” N.Y. Post, Oct. 19, 2011 .....	21
Danny Hakim, “City Pension Funds Refuse to Release Recipients’ Names,” N.Y. Times, July 20, 2011 .....	21
Douglass Dowty, “Search Pension Data for Public Employees Across New York State,” Syracuse Post-Standard, <i>available at</i> , <a href="http://www.syracuse.com/news/index.ssf/2010/06/search_pensions_for_public_emp.html">http://www.syracuse.com/news/index.ssf/2010/06/search_pensions_for_public_emp.html</a> (June 16, 2010).....	19
Duff Wilson, “Ex-Manager Charged in L.I.R.R. Disability Probe,” N.Y. Times, <i>available at</i> <a href="http://www.nytimes.com/2008/11/18/nyregion/18lirr.html?ref=longislandrailroad">http://www.nytimes.com/2008/11/18/nyregion/18lirr.html?ref=longislandrailroad</a> (Nov. 17, 2008) .....	16
Jacob Gershman, “Appeals Court Blocks Access to Police Pension Data,” Wall St. J., Oct. 18, 2011 .....	21

Jonathan Bandler, “Dozens on Lower Hudson Valley Ballots Would Qualify for Salary Plus Public Pension,” The Journal News, *available at* <http://www.lohud.com/article/99999999/WATCHDOG/399990152/Dozens-Lower-Hudson-Valley-ballots-would-qualify-salary-plus-public-pension> (Sept. 10, 2007) ..... 17, 18

Jonathan Bandler, “Ex-cop To Get \$183G a Year After Pension Error is Found,” The Journal News, *available at*, <http://www.lohud.com/apps/pbcs.dll/article?AID=201111280313> (Nov. 28, 2011) ..... 19, 20

Jonathan Bandler and Gerald McKinstry, “Six Figure Pension Club Grows After Retirement Incentives, Spano’s Departure,” The Journal News, *available at*, <http://www.lohud.com/article/99999999/WATCHDOG/399990160/Six-figure-pension-club-grows-after-retirement-incentives-Spano-s-departure> (Oct. 9, 2011) ..... 19

Jonathan Bandler, “Public Workers Enjoy Golden Nest Eggs,” The Journal News, *available at*, <http://www.lohud.com/article/99999999/WATCHDOG/105040010/Public-workers-enjoy-golden-nest-eggs> (May 11, 2010) ..... 18, 19

Joseph Spector, “Retirements Surge for Stateworkers, Teachers,” Democrat and Chronicle, *available at*, <http://www.democratandchronicle.com/article/20111016/NEWS01/110160333/Retirements-surge-New-York-state-workers-teachers> (Oct. 16, 2011)..... 20

“Judges collect pension and regular pay, and it’s perfectly legal,” The Journal News, *available at*, <http://pqasb.pqarchiver.com/lohud/access/1899286431.html?FMT=ABS&FMTS=ABS:FT&date=Nov+12%2C+2009&author=Jonathan+Bandler&pub=The+Journal+News&edition=&startpage=A.1&desc=Judges+collect+pension+and+regular+pay%2C+and+it%27s+perfectly+legal> (Nov. 12, 2009) ..... 18

Meghan E. Murphy, Joan Gralla, and Yancy Roy, “More Public Employees Striking It Rich With 6-Figure Pensions,” *Newsday*, available at, <http://data.newsday.com/new-york/data/state/pensions/> (Feb. 3, 2013) ..... 20

New York’s Exploding Pension Costs, Report of the Empire Center for New York State Policy, Dec. 7, 2010, available at <http://www.empirecenter.org/Special-Reports/2010/12/pensionexplosion120710.cfm>..... 12

Press Release, Office of the Attorney General, available at <http://www.ag.ny.gov/press-release/attorney-general-cuomo-obtains-agreement-long-island-rail-road-independent-examiner> (Mar. 22, 2010)..... 17

Sylvester J. Schieber, “Political Economy of Public Sector Retirement Plans,” *Journal of Pension Economics and Finance*, Cambridge University Press (2011)..... 14

Walt Bogdanich, “A Disability Epidemic Among a Railroad’s Employees,” *N.Y. Times*, available at <http://www.nytimes.com/2008/09/21/nyregion/21lirr.html?pagewanted=all> (Sept. 20, 2008)..... 14, 15, 16

William K. Rashbaum, “More Arrests of Retirees in Fraud Case at L.I.R.R.,” *N.Y. Times*, available at <http://www.nytimes.com/2012/09/13/nyregion/more-lirr-retirees-arrested-on-fraud-charges.html?adxnml=1&adxnmlx=1383778862-PQz2YANh6hoou5V1wIexrw> (Sept. 13, 2012) ..... 16

William K. Rashbaum and Mosi Secret, “11 Charged in L.I.R.R. Disability Fraud Plot,” *N.Y. Times*, available at <http://www.nytimes.com/2011/10/28/nyregion/charges-in-lirr-disability-scheme.html?ref=longislandrailroad> (Oct. 27, 2011)..... 16

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APL-2013-00168

Albany County  
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**BRIEF OF AMICI CURIAE THE ALBANY TIMES UNION, THE  
CITIZEN, DOW JONES & COMPANY, INC., THE HEARST  
CORPORATION, NEWSDAY LLC, THE NEW YORK DAILY NEWS, THE  
NEW YORK NEWS PUBLISHERS ASSOCIATION, THE NEW YORK  
POST, THE NEW YORK PRESS ASSOCIATION, THE NEW YORK  
TIMES COMPANY, AND THE SYRACUSE MEDIA GROUP IN SUPPORT  
OF THE APPEAL OF PETITIONER-APPELLANT THE EMPIRE  
CENTER FOR NEW YORK STATE POLICY**

## Statement of Identity and Interest of *Amici Curiae*

*Amici* are news organizations who support the appeal in these cases because their newsgathering and reporting on government pensions and related topics threatens to be adversely affected by the decisions below. *Amici* include national and regional news organizations, as well as trade associations representing newspapers in New York that regularly gather and disseminate news and information to the public in a variety of media or otherwise support and defend efforts to do so. *Amici* regularly investigate and report to the public on government spending and frequently rely on open records laws in New York and across the country to observe, analyze, and scrutinize the operation and use of pension funds. In particular, *Amici* use the data at issue here, that is, the names of retirees who receive taxpayer-funded pensions (as distinct from their beneficiaries), to fulfill the press's role as watchdogs of government. To that end, *Amici* have an ongoing stake in ensuring open access to pensioner names and in preventing government entities from shielding the use of public funds from review and scrutiny.

The following is a description of each *Amici* organization:

The Albany Times Union is a leading newspaper in Upstate New York. The newspaper is wholly-owned by the Hearst Corporation ("Hearst") and operates the timesunion.com website. It covers federal, state, and local governments and is

widely respected for its focus on watchdog reporting, particularly on state government and politics.

The Citizen is a daily newspaper based in Auburn in central New York covering news and information in all or parts of three counties through its print edition and website, auburnpub.com.

Daily News, L.P. publishes the New York *Daily News*, a daily newspaper that is the fifth-largest paper in the country by circulation. The Daily News' web site, nydailynews.com, receives approximately 31 million unique visitors each month. The paper covers New York State government and politics on a daily basis.

Dow Jones & Company, Inc., ("Dow Jones") a global provider of news and business information, is the publisher of The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with nearly 2,000 journalists in more than fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is an indirect wholly-owned subsidiary of News Corporation.

The Hearst Corporation is one of the nation's largest diversified media companies. Hearst owns and operates fifteen daily newspapers, including the



Albany Times Union in New York, twenty-nine television stations, including WPTZ in Plattsburgh, N.Y., and two radio stations. It also publishes twenty consumer magazines in the United States, numerous business publications, and has interests in cable stations and television production companies.

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.

The New York Press Association (“NYPA”) is a 160 year-old trade association representing more than 760 daily, weekly, ethnic and religious newspapers published in the State of New York. NYPA works to encourage and develop the highest standards in the practice of professional journalism, and to support the financial interests and economic prosperity of member newspapers through its legislative efforts, educational programs, and newspaper advertising placement operations.

The New York News Publishers Association is a trade association representing the newspapers of New York State. NYNPA provides governmental representation at the state Capitol on issues regarding freedom of the press and freedom of speech.

The New York Post is the nation’s oldest continuously published newspaper, with the seventh largest circulation in the United States. It is distributed primarily

in the New York metropolitan area and through its websites [nypost.com](http://nypost.com) and [pagesix.com](http://pagesix.com).

The New York Times Company is the publisher of The New York Times and operates [nytimes.com](http://nytimes.com).

The Syracuse Media Group is an unincorporated division of The Herald Publishing Company, LLC. It publishes news of general interest, including coverage focused on governmental affairs, online at [Syracuse.com](http://Syracuse.com), and in print in The Post-Standard.

Corporate Disclosure Statements of *Amici Curiae*

The Albany Times Union (the “Times Union”) is a wholly-owned subsidiary of the Hearst Corporation, a Delaware corporation privately held by The Hearst Family Trust. The Times Union has no other subsidiaries or affiliates.

The Citizen is wholly owned by Davenport, Iowa-based Lee Enterprises, Incorporated. Lee Enterprises, Incorporated is a publicly traded Delaware corporation with no parent company. Based upon the most recent filings with the United States Securities and Exchange Commission, no publicly held company holds ten percent (10%) or more of the outstanding stock of Lee Enterprises, Incorporated.

Daily News, L.P. publishes the New York Daily News. It is a limited partnership with no parents, subsidiaries, or affiliates.

Dow Jones is an indirect wholly-owned subsidiary of News Corporation.

Hearst Corporation, a Delaware corporation, is privately held by The Hearst Family Trust and has no other parent. None of Hearst’s subsidiaries or affiliates is

publicly held, with the exception of affiliates Fimilac SA and IGG Inc., in which Hearst owns minority interests.

News Corporation is a publicly traded company with operations in diversified media, news, education and information services. It is the ultimate parent of Dow Jones & Company and NYP Holdings, Inc., the publisher of the New York Post. No publicly held company owns 10% or more of News Corporation's stock.

CSC Holdings, LLC is the parent of Newsday LLC. CSC Holdings, LLC is a subsidiary of Cablevision Systems Corporation, a publicly held company, and Tribune Company.

The New York Post is published by NYP Holdings, Inc. NYP Holdings is an indirect wholly-owned subsidiary of News Corporation.

New York Press Association owns, as its wholly-owned subsidiary, the New York Press Service – a for-profit, fully taxable, newspaper advertising planning and placement service. It also operates as a fully charitable entity, the New York Press Association Foundation, a not-for-profit entity that provides paid summer

internships for college students and funds educational initiatives at colleges in New York that offer journalism degree programs.

The New York News Publishers Association has no parent, subsidiaries or affiliates.

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

Syracuse Media Group is an unincorporated division of The Herald Publishing Company, LLC. 100% of its interests are held by Advance Magazine Publishers Inc., a privately held corporation. It has no publicly held subsidiaries or affiliates.

## Summary of Argument

Public access to civil servant pensioner names has repeatedly led to exposure of fraud and waste in government pension systems, the revelation of which has resulted in constructive public dialogue and change to the ways in which pensions are administered. As demonstrated below, journalists have long collected individual retiree names and used them effectively to uncover waste, fraud, and misuse of pension funds, and to provide taxpayers with important information on the use of their money.

Through the use of these names, the press has revealed pension fraud and abuse on both the systemic and individual level. Access to specific names has enabled journalists to identify individual cases – like the New York City fireman who retired on a full disability pension because of “bronchial asthma,” yet continued to train and compete as an elite triathlete – and systematic problems – like the LIRR’s routine grant of disability pensions to 97% of retirees in one year alone – that would otherwise go undetected without the ability to identify and track individual plan participants. Abuses such as these could not have been reported without access to pensioner names, and may go undetected in the future if the Appellate Division decisions in these cases are affirmed.

Historically, the press has used pensioner names in conjunction with other pension data to provide the public with analysis of the distribution and use of a

significant amount of taxpayer money. This reporting has drawn public attention and scrutiny to various oddities of New York's pension systems, bringing to light pensions of retired civil servants that exceed their base pay, and informing the public of elected officials and candidates who were eligible to collect salaries on top of large pensions.

Access to individual pensioner names has enabled the press to identify anomalies that would have been undetectable from only aggregated pension information. Thus, access to these names has furthered the fundamental policy objective behind New York's Freedom of Information Law ("FOIL"), which is to foster a fully-informed electorate, particularly in the area of public spending, to ensure that the citizens of New York are able to capably supervise the handling of taxpayer funds by their public servants and engage in effective self-government.

The ability to track pension expenditures to ensure the faithful husbandry of public funds provided by taxpayers has never been more necessary or important. Detroit's filing for bankruptcy in 2013 is a cautionary tale of the need to closely monitor public pension funds and the consequences of not doing so. Closer to home, the recently unsealed indictment charging 106 people – including 80 retired New York City police officers and firefighters – in a scheme that allegedly bilked the federal government out of hundreds of millions of dollars in federal disability

benefits, details the brazenness with which some individuals fraudulently collect public benefits.

This Court should reverse the Decisions of the Appellate Division, Third Department and Appellate Division, First Department, which allow pension funds to conceal from the taxpayers who fund them basic and essential information that lies at the core of the press's watchdog role investigating pension expenditures.

### Argument

*Amici* fully support the legal and policy arguments presented by Petitioner-Appellant, the Empire Center for New York State Policy ("Empire Center"), which establish solid ground for reversing the Appellate Division, Third Department and Appellate Division, First Department's erroneous orders permitting pension funds to withhold the names of retired public servants who receive taxpayer-funded pensions. The Appellate Division rulings are wrong on every level – they are inconsistent with the language of FOIL and the canons of statutory construction, decades of precedent, and public policy.

*Amici* write separately to illustrate in concrete terms the public harm that would result if those orders are left to stand – harm measured in news reports of abuse, waste and fraud that could no longer be told because information essential to those reports is no longer publicly available. The importance of pensioners'



names to the press's investigatory work and its decades-long use as a key piece of data in monitoring the use of public funds at both the individual and systemic level cannot be overstated. Access to these names has not only allowed the press to uncover pension fraud, the resulting news stories have led to positive change in pension system supervision.

Given the budget crises at all levels of government, it is more critical now than ever that the public maintain the access it has historically had to this essential pension data, which lies at the foundation of effective public fiscal oversight. Enormous amounts of money are funneled into pension funds every year,<sup>1</sup> and ever-more frequent news reports on the misuse of these funds, discussed *infra*, demonstrate the need for public access to this information. Without the news media's collection and analysis of pensioner names, the public would be unable to discover corruption related to pension funds, informatively participate in debate surrounding the use of pension funds, oversee the use of such funds, and perform year-to-year comparisons of individualized data.

#### Public Policy Behind New York Freedom of Information Law

FOIL (Pub. Off. Law Sec. 87, *et seq.*) is an indispensable tool for the press to perform its investigatory work and fulfill its role as the public's watchdog. The

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<sup>1</sup> See New York's Exploding Pension Costs, Report of the Empire Center for New York State Policy, Dec. 7, 2010, available at <http://www.empirecenter.org/Special-Reports/2010/12/pensionexplosion120710.cfm> (describing hundreds of billions of dollars involved in New York state and local pension funds).

statute was “enacted in furtherance of the public’s vested and inherent ‘right to know,’ [and] affords all citizens the means to obtain information concerning the day-to-day functioning of State and local government thus providing the electorate with sufficient information to ‘make intelligent, informed choices with respect to both the direction and scope of government activities’ and with an effective tool for exposing waste, negligence and abuse on the part of government officers.”

*Capital Newspapers v. Burns*, 67 N.Y.2d 562, 566 (1986) (quoting *Matter of Fink v. Lefkowitz*, 47 N.Y.2d 567, 571 (1979)). The Appellate Divisions’ unprecedented orders, in effect, bar public access to the names of pensioners and draw a curtain over the details of pension funds that are funded by billions of dollars of taxpayer money each year. The resulting lack of transparency into pension systems – an area of massive public expense that has been riddled with abuse and mismanagement – would thwart FOIL’s central mission to expand the public’s access to the records of government so as to more readily identify and expose waste, negligence and abuse. *Burns*, 67 N.Y.2d at 566.

#### Media’s Use of Pensioner Name Data

Access to the names of pensioners is an essential instrument in the media’s efforts to analyze and distill pension data. Pensioner names are necessary to compare data year-over-year, to analyze individual pension payouts, and to expose systemic abuse. The following news reports provide poignant, concrete examples

of how the media<sup>2</sup> has used pensioner names in order to discover and expose abuse of pension systems:

- New York City fireman who received a disability pension of three-quarters pay, \$86,000 per year, for “bronchial asthma” while he regularly trained and competed in the top of his age group as an elite triathlete. *See* Carl Campanile, “86G Disability Pension for Marathon Man,” N.Y. Post, available at [http://www.nypost.com/p/news/local/paid\\_for\\_no\\_wheezin\\_jbt34b3pBFo4vbmWHn1DGO](http://www.nypost.com/p/news/local/paid_for_no_wheezin_jbt34b3pBFo4vbmWHn1DGO) (July 6, 2010). Without access to the name of this pension recipient, journalists would not have been able to connect the dots from the individual’s large pension award to his frequent participation in races. It is that very connection which forms the basis of the story’s impact. Such abuse would go undetected under a regime that allows pension funds to withhold pensioner names under FOIL.
- As many as 97 percent of Long Island Railroad (“LIRR”) career employees in one year applied for and received disability payments, often immediately after retirement. *See* Walt Bogdanich, “A Disability Epidemic Among a

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<sup>2</sup> Academic researchers have also used pension names in the study of pension fund abuse. *See* Sylvester J. Schieber, “Political Economy of Public Sector Retirement Plans,” *Journal of Pension Economics and Finance*, Cambridge University Press, at 5 (2011) (relying on data in New York Times article exposing former police officers who draw pensions in excess of their salaries).

Railroad's Employees," N.Y. Times, *available at*

<http://www.nytimes.com/2008/09/21/nyregion/21lirr.html?pagewanted=all>

(Sept. 20, 2008). Through gaining access to pension data, including individual pensioner names, The New York Times exposed a system which allowed the routine payment of disability benefits to former employees. The Railroad Retirement Board, the federal agency that pays the claims, granted payments at a rate three to four times higher than the average railroad and significantly higher than comparable railroads serving the New York City area.

The newspaper discovered dozens of these pension recipients on the golf course, despite being classified as occupationally disabled. Without the individual names of pensioners, The New York Times would have been unable to uncover and report such abuses and the public would have remained uninformed about a system that had paid a quarter of a billion dollars in federal disability money to LIRR employees since 2000. In fact, not even the LIRR could ferret out such information, as it was told by the Railroad Retirement Board that the number of disabilities among former LIRR workers was typical in the industry. Not until The New York Times requested the individual pension data and analyzed the numbers were the anomalies exposed.

The pension data, obtained by The New York Times through FOIL requests for pension recipient names and other information, was not just significant to New York taxpayers. Although the Retirement Board “is funded through taxes on railroads and their workers . . . Social Security had to contribute \$3.6 billion [in 2007] to cover expenses.” *Id.* The newspaper’s discovery of the waste reached every taxpayer in America; such a revelation, based on an analysis of comprehensive pensioner data, would have been impossible had the pension fund been permitted to withhold recipient names and pension information. The unearthing of the pension data led to state and federal investigations into the pension fund and the arrest of the LIRR’s pension fund manager and nearly three dozen others associated with the scheme. *See, e.g.*, William K. Rashbaum, “More Arrests of Retirees in Fraud Case at L.I.R.R.,” N.Y. Times, *available at* <http://www.nytimes.com/2012/09/13/nyregion/more-lirr-retirees-arrested-on-fraud-charges.html?adxnml=1&adxnmlx=1383778862-PQz2YANh6hoou5V1wIexrw> (Sept. 13, 2012); William K. Rashbaum and Mosi Secret, “11 Charged in L.I.R.R. Disability Fraud Plot,” N.Y. Times, *available at* <http://www.nytimes.com/2011/10/28/nyregion/charges-in-lirr-disability-scheme.html?ref=longislandrailroad> (Oct. 27, 2011); Duff Wilson, “Ex-Manager Charged in L.I.R.R. Disability Probe,” N.Y. Times, *available*

*at*

<http://www.nytimes.com/2008/11/18/nyregion/18lirr.html?ref=longislandrailroad> (Nov. 17, 2008).

Due to the media's reporting efforts in exposing the LIRR pension scandal, the Attorney General of New York obtained an agreement with the railroad in which LIRR would appoint an independent examiner and implement additional reforms to address the abuses uncovered by the New York Times. *See* Press Release, Office of the Attorney General, *available at* <http://www.ag.ny.gov/press-release/attorney-general-cuomo-obtains-agreement-long-island-rail-road-independent-examiner> (Mar. 22, 2010).

The collection of individual pensioner names not only allows the press to uncover pension fund scandal and abuse, but also permits the press to report on controversial, yet lawful, pension payouts to individuals with important public influence, such as public figures and elected officials. In the following news articles the media used pension name data to:

- Inform voters that at least 25 incumbents or candidates in the 2011 election were able to collect salaries on top of pensions under a provision of New York State law, sums that often soar into the six-figures. *See* Jonathan Bandler, "Dozens on Lower Hudson Valley

Ballots Would Qualify for Salary Plus Public Pension,” The Journal News, *available at*

<http://www.lohud.com/article/99999999/WATCHDOG/399990152/Dizens-Lower-Hudson-Valley-ballots-would-qualify-salary-plus-public-pension> (Sept. 10, 2007). This type of pension data is

fundamental to taxpayers’ and voters’ ability to make informed decisions regarding government workers and candidates. *See also*, “Judges collect pension and regular pay, and it’s perfectly legal,” The Journal News, *available at*,

<http://pqasb.pqarchiver.com/lohud/access/1899286431.html?FMT=ABS&FMTS=ABS:FT&date=Nov+12%2C+2009&author=Jonathan+Bandler&pub=The+Journal+News&edition=&startpage=A.1&desc=Judges+collect+pension+and+regular+pay%2C+and+it%27s+perfectly+legal> (Nov. 12, 2009) (naming state judges who make over \$200,000 per year in combined salary and pension benefits).

- Uncover retired police officers and firefighters who receive pensions in excess of their base pay. Since pensions are often calculated based on salary from the final three years worked, employees grossly increase overtime during those years to receive pensions higher than their base salary. *See* Jonathan Bandler, “Public Workers Enjoy

Golden Nest Eggs,” The Journal News, *available at*,

<http://www.lohud.com/article/99999999/WATCHDOG/105040010/Public-workers-enjoy-golden-nest-eggs> (May 11, 2010).

- Illustrate increase in retirees eligible to receive pensions in excess of \$100,000 and link to list of top 100 pension earners in New York State for 2009. *See* Douglass Dowty, “Search Pension Data for Public Employees Across New York State,” Syracuse Post-Standard, *available at*,  
[http://www.syracuse.com/news/index.ssf/2010/06/search\\_pensions\\_for\\_public\\_emp.html](http://www.syracuse.com/news/index.ssf/2010/06/search_pensions_for_public_emp.html) (June 16, 2010).
- Expose the increase in six-figure pensions for the administration of former Westchester County Executive Andrew Spano. *See* Jonathan Bandler and Gerald McKinstry, “Six Figure Pension Club Grows After Retirement Incentives, Spano’s Departure,” The Journal News, *available at*,  
<http://www.lohud.com/article/99999999/WATCHDOG/399990160/Six-figure-pension-club-grows-after-retirement-incentives-Spano-s-departure> (Oct. 9, 2011).
- Inform taxpayers that a former police officer would receive a \$183,000 pension. *See* Jonathan Bandler, “Ex-cop To Get \$183G a



Year After Pension Error is Found,” The Journal News, *available at*,  
<http://www.lohud.com/apps/pbcs.dll/article?AID=2011111280313>

(Nov. 28, 2011);

- Inform taxpayers of skyrocketing retirement pay for individual public servants and teachers. *See* Joseph Spector, “Retirements Surge for Stateworkers, Teachers,” Democrat and Chronicle, *available at*,  
<http://www.democratandchronicle.com/article/20111016/NEWS01/110160333/Retirements-surge-New-York-state-workers-teachers> (Oct. 16, 2011).
- Reveal increase in newly retired police and firefighters from the Hudson Valley who earn six-figure pensions, including individuals who receive comparatively large pensions. *See* Meghan E. Murphy, Joan Gralla, and Yancy Roy, “More Public Employees Striking It Rich With 6-Figure Pensions,” Newsday, *available at*,  
<http://data.newsday.com/new-york/data/state/pensions/> (Feb. 3, 2013).

These stories represent only a small sample of the ways in which the media uses pensioner names in conjunction with other pension data to provide the public with information regarding the use of public funds and expose fraud and waste throughout system. Without access to the names, taxpayers would be unable to track how and where billions of their dollars are spent.

### The Aftermath of Nondisclosure

This case is not an anomaly. Since the Appellate Division's decision in *Empire Center v. NYC Police Pension Fund*, 88 A.D.3d 520 (1st Dep't 2011) courts have repeatedly cited its holding to support nondisclosure, while pension funds and local governments across the state are now refusing to release the names of pension recipients, making oversight of the systems and detection of potential abuses impossible. *See, e.g.*, Danny Hakim, "City Pension Funds Refuse to Release Recipients' Names," N.Y. Times, July 20, 2011 ("the names of retired city employees, when linked to pension amounts, were in the past analyzed by policy groups and news organizations seeking to detect potential pension abuses or to understand the growth of pension spending"); Chuck Bennett, "Cop pensions stay undercover: court," N.Y. Post, Oct. 19, 2011 (As a result of the Supreme Court's ruling, "other pension funds, including the New York City Employees Retirement System and teachers pension fund . . . began withholding the names of their members."); Jacob Gershman, "Appeals Court Blocks Access to Police Pension Data," Wall St. J., Oct. 18, 2011 ("After the denial in the city police fund case, administrators of other city pension funds, including the largest one, the New York City Employee Retirement System, stopped releasing the names of people collecting pensions.").

This pattern of nondisclosure has already begun to starve the media of an essential ingredient for its work in providing the public with important information that allows citizens to make informed decisions regarding their government. If the practice of nondisclosure is allowed to continue, the public will lose an essential window on the expenditure of large sums of public funds.

Conclusion

For all the reasons set forth here and in Petitioner-Appellant's Brief and Reply, this Court should reverse the Appellate Division's Decision.

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Respectfully submitted,



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Jonathan R. Donnellan  
Diego Ibarquen  
HEARST CORPORATION  
Office of General Counsel  
300 West 57 Street, 40<sup>th</sup> Floor  
New York, NY 10019  
Tel.: (212) 841-7000  
Fax: (212) 554-7000

Attorneys for *Amici Curiae*

Of Counsel:

J.P. Cratty  
Corporate Attorney  
Lee Enterprises, Incorporated

201 North Harrison Street, Suite 600  
Davenport, IA 52801  
Ph: 563-383-2139  
F: 563-327-2692

Eugenie C. Gavenchak  
Senior Vice President, Deputy General Counsel  
News Corporation  
1211 Avenue of the Americas  
New York, NY 10036  
212-852-7024

Mark Jackson,  
Executive Vice President and General Counsel  
Jason P. Conti  
Senior Vice President and Deputy General Counsel  
Chief Compliance Officer  
Dow Jones & Company, Inc.  
1211 Avenue of the Americas, 7th Floor  
New York, NY 10036  
(212) 416-2164 (phone)  
(212) 416-2524 (fax)

Matthew A. Leish  
Vice President and Assistant General Counsel  
Daily News, L.P.  
4 New York Plaza  
New York, New York 10004  
(212) 210-2144

David E. McCraw  
Vice President and Assistant General Counsel  
The New York Times Company  
620 Eighth Ave.  
New York, NY 10018  
Ph: 212-556-4031  
F: 212-556-1009

Dina Sforza  
Senior Counsel, Law-Local Media

Cablevision Systems Corporation  
Newsday LLC and News 12 Networks, LLC  
1111 Stewart Ave.  
Bethpage, NY 11714  
Ph: 516-803-3298  
F: 516-513-3103

Syracuse Media Group  
Richard Bernstein  
Neil M. Rosenhouse  
Sabin, Bermant & Gould LLP  
Four Times Square  
New York, NY 10036  
Ph: 212-381-7039