

Harvard's Citizen Media Law Project and Cyberlaw Clinic Partner With Reporter's Committee for Freedom of the Press to Defend First Amendment Rights in New Hampshire

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The Citizen Media Law Project (CMLP), assisted by Harvard Law School's Cyberlaw Clinic, urged the New Hampshire Supreme Court to defend the First Amendment rights of a website that covers news about the mortgage industry.

The CMLP, in conjunction with the Reporters Committee for Freedom of the Press (RCFP) and with the assistance of local counsel Paul Apple of Drummond Woodsum & MacMahon in Portsmouth, NH, submitted an *amicus curiae* [brief \(PDF\)](#) in the case of *The Mortgage Specialists, Inc. v. Implode-Explode Heavy Industries, Inc.* The case involves Implode-Explode Heavy Industries, Inc., which runs a mortgage industry website that posted a New Hampshire Banking Department document, obtained from an anonymous source. That document described certain business practices of the Mortgage Specialists, Inc., a lending company under investigation in New Hampshire and Massachusetts. After the mortgage company discovered the disclosure, it sued the website, demanding that the document be removed and that the anonymous source be identified. The Rockingham County Superior Court granted these requests, and the case is presently on appeal.

In their brief, the *amici* focused on a series of cases in which courts permitted the publication of confidential or controversial documents – from the U.S. Supreme Court in the famed Pentagon Papers case through recent cases involving recorded cell phone conversations and videos of police searches posted online. *Amici* also provided extensive caselaw support for the proposition that anonymous news sources should be protected.

The *amici* urged the New Hampshire Supreme Court to carefully consider the harm the Superior Court's ruling would have on freedom of the press, noting in their brief that the publication of this document “is not unlawful in New Hampshire, and, even if it were, would nevertheless be fully protected speech under the First Amendment.” In addition, *amici* asked the Supreme Court to apply New Hampshire's qualified reporter's privilege to protect the identity of its source, noting “[i]t is the function of an organization, not the medium of publication, which defines it as worthy of a journalist's privilege.”

The CMLP was represented on the brief by the Cyberlaw Clinic. The CMLP and the Cyberlaw Clinic are both based at Harvard University's Berkman Center for Internet & Society, an organization dedicated to studying the development of cyberspace. Andy Sellars, a Cyberlaw Clinic summer intern and student at The George Washington University Law School in Washington, DC, drafted the brief alongside CMLP Assistant Director Sam Bayard, Cyberlaw Clinical Fellow Christopher Bavitz, and RCFP Legal Fellow Samantha Fredrickson.

“It was a great privilege to work with the CMLP and RCFP on this important issue,” Sellars said. “We hope the New Hampshire Supreme Court will carefully weigh the First Amendment rights at stake in this case.”

About the Citizen Media Law Project

The Citizen Media Law Project, which is jointly affiliated with the Berkman Center for Internet & Society at Harvard University and the Center for Citizen Media, provides legal assistance, training, research, and other resources for individuals and organizations involved in online and citizen media. The CMLP endeavors to serve as a catalyst for creative thinking about the intersection of law and journalism on the Internet. Through the project's website, www.citmedialaw.org, the active engagement of lawyers and scholars, and occasional sponsored conferences, project staff are working to build a community of lawyers, academics, and others

who are interested in facilitating citizen participation in online media and protecting the legal rights of those engaged in speech on the Internet. For more information, visit <http://www.citmedialaw.org>.

About the Harvard Law School Cyberlaw Clinic

The Cyberlaw Clinic, based at the Berkman Center for Internet & Society, engages Harvard Law School students in a wide range of real-world litigation, licensing, client counseling, advocacy, and legislative projects and cases, covering a broad spectrum of Internet, new technology, and intellectual property legal issues. The Clinic was the first of its kind, and it continues its tradition of innovation in its areas of practice. Among many other areas, the scope of the Clinic's work includes counseling and legal guidance regarding complex open access, digital copyright, and fair use issues; litigation, amicus filings, and other advocacy to protect online speech and anonymity; legal resources and advice for citizen journalists; licensing and contract advice, especially regarding Creative Commons and other "open" licenses; patent reexamination requests for overly broad technology patents; and guidance and amicus advocacy for effective but balanced protection of children in the areas of social networking, child pornography, and online exploitation. More information can be found at <http://cyber.law.harvard.edu/clinical>.