

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC PRIVACY  
INFORMATION CENTER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
JUSTICE,

Defendant.

Civil Action No. 19-cv-810 (RBW)

JASON LEOPOLD, BUZZFEED, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
JUSTICE,

Defendant.

Civil Action No. 19-cv-957 (RBW)

**MOTION OF CITIZENS FOR RESPONSIBILITY AND ETHICS  
IN WASHINGTON FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE***

Pursuant to Local Rule 7(o) of the Local Civil Rules of the United States District Court for the District of Columbia (the “Local Rules,” and each rule therein, a “Local Rule”), Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully moves the Court for leave to file a memorandum of points and authorities as *amicus curiae* in opposition to the Department of Justice’s motion for summary judgment and in support of Plaintiffs’ motions for summary judgment. In support of its motion, CREW states as follows:

1. Proposed *amicus* CREW is a nonprofit, nonpartisan corporation organized under section 501(c)(3) of the Internal Revenue Code. Through a combined approach of research,

advocacy, public education, and litigation, CREW seeks to protect the rights of citizens to be informed about the activities of government officials and to ensure the integrity of those officials. CREW frequently files and litigates Freedom of Information Act (“FOIA”) requests, including requests for records relating to criminal and civil investigations.

2. CREW has engaged in public education concerning the Special Counsel regulations as well as the issues that Special Counsel Robert Mueller investigated.<sup>1</sup>

3. The attached proposed *amicus* brief offers a perspective offered by neither party regarding the application of the deliberative process privilege to the Report. To determining whether portions of the Report are predecisional or deliberative and therefore subject to withholding under Exemption 5 of the FOIA and the deliberative process privilege, the Court must consider the authority that Acting Attorney General Rosenstein delegated to the Special Counsel, the Special Counsel regulations, and the relationship between the Report and the decisions reached by the Special Counsel.

4. The court has “broad discretion” to permit CREW’s participation in this suit as *amicus curiae*. *Nat’l Ass’n of Home Builders v. U.S. Army Corps of Engineers*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007).

5. CREW’s participation in this matter as an *amicus curiae* would not unduly delay the Court’s ability to rule on the parties’ cross motions from summary judgment. Pursuant to this

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<sup>1</sup> See, e.g., Noah Bookbinder, Norman Eisen, and Caroline Fredrickson, Why Trump Can’t (Easily) Remove Mueller—and What Happens If He Tries, *American Constitution Society & CREW* (Dec. 6, 2017), available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/12/06181615/Why-Trump-Cant-Easily-Remove-Mueller%E2%80%94and-What-Happens-If-He-Tries-12.6.17.pdf>; Barry H. Berke, Noah Bookbinder, and Norman Eisen, Presidential Obstruction of Justice: The Case of Donald J. Trump, *Brookings* (Aug 22, 2018), available at <https://www.brookings.edu/research/presidential-obstruction-of-justice-the-case-of-donald-j-trump-2nd-edition/>.

Court's scheduling order, the parties' briefing of this matter will not be complete until July 15, 2019 and a hearing on the cross motions is schedule for August 5, 2019. Order, ECF No. 43 (May 3, 2019).

6. Counsel for CREW has contacted counsel for the parties to determine whether they would consent to the filing of the attached brief. Counsel for the Department of Justice objected.

WHEREFORE, leave to file the attached *amicus curiae* brief should be granted. A proposed order is attached to this motion.

June 28, 2019

Respectfully Submitted,

/s/ Conor M. Shaw  
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