

COURT OF APPEALS  
OF THE STATE OF NEW YORK

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RACHEL EHRENFELD,

USCA Docket No. 06-2228-cv

Plaintiff-Appellant,

**NOTICE OF MOTION  
FOR LEAVE TO  
APPEAR AS  
*AMICUS CURIAE***

-against-

KHALID SALIM A BIN MAHFOUZ,

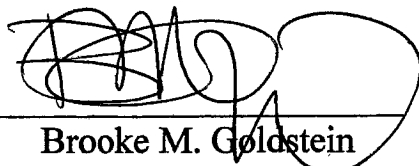
Defendant-Respondent.

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PLEASE TAKE NOTICE that, upon the annexed Affirmation of Brooke M. Goldstein dated October 9, 2007, and the accompanying proposed Brief of *Amicus Curiae* dated October 9, 2007, and all prior proceedings herein, The Middle East Forum, a 501(c)(3) nonprofit organization, will move this Court at a term thereof to be held at the Court of Appeals Hall in Albany, New York, on the 15<sup>th</sup> day of October, 2007, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, for an order granting it leave to appear as *amicus curiae* in the above-captioned appeal, and for such other and further relief that the Court may deem just and proper.

Dated: New York, New York  
October 9, 2007

THE LEGAL PROJECT AT  
THE MIDDLE EAST FORUM

By:   
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COURT OF APPEALS  
OF THE STATE OF NEW YORK

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RACHEL EHRENFELD,

USCA Docket No.06-2228-cv

Plaintiff-Appellant,

-against-

KHALID SALIM A BIN MAHFOUZ,

Defendant-Respondent.

**AFFIRMATION OF  
BROOKE M.  
GOLDSTEIN  
IN SUPPORT OF  
MOTION FOR LEAVE  
TO APPEAR  
AS *AMICUS CURIAE***

-----X

BROOKE M. GOLDSTEIN, an attorney duly admitted to practice before this Court, hereby affirms under penalty pursuant to NY CPLR 2106:

1. I am an attorney duly admitted to practice in the Courts of the State of New York and I am counsel to the Middle East Forum (MEF) as well as Director of the Legal Project (LP). I submit this Affirmation in support of the Amicus' motion for leave to appear as *amicus curiae* in the above-captioned appeal.
2. As described in the accompanying proposed *amicus curiae* brief, the Amicus is a 501(c)(3) nonprofit organization and think tank. The Middle East Forum was founded and is directed by Daniel

Pipes, an internationally respected author and one of the most prominent scholars and experts on Middle Eastern affairs and the war on terrorism. The Legal Project is an arm of the Middle East Forum dedicated to protecting our country's valuable researchers, analysts and authors who have found themselves on the receiving end of targeted lawsuits while working to expose the threat of terrorism within our borders.

3. The Amicus respectfully submits that it is uniquely suited to assist the Court in the resolution of this appeal. Dr. Ehrenfeld is just one of many researchers and analysts who have become victims of forum shopping and intimidation tactics used by Mahfouz and others, aimed only at punishing those who are working to engage in dialogue about terrorism and its sources of financing. The Legal Project is very familiar with the type of "lawfare" being used by the Defendant, who has tactfully chosen a foreign court with radically different libel laws to create a looming, chilling effect on the exercise of free speech by Dr. Ehrenfeld and other American authors in the field.
4. American researchers and analysts are on the front lines of the war on terrorism as they work to educate the public and brief the U.S.

government about the various threats posed to civil society.

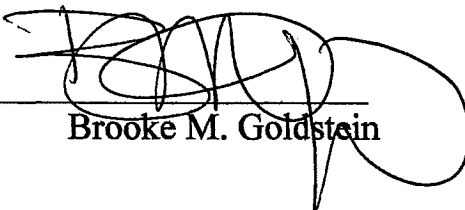
Unfortunately, legal action by individuals and organizations seeking to silence their critics in the United States is an ascending phenomenon. Such lawsuits are often predatory and undertaken as a means to bankrupt, distract, intimidate, and demoralize defendants. There is a grave need for American courts to provide a forum within which American authors can preemptively challenge the effects of this tactic.

5. For the reasons stated in the proposed *amicus curiae* brief, the Amicus believes it is vital that this Court address the merits of the issue at hand, and recognize that Rachel's case is not unique nor will it be the last attempt at stifling free speech within our borders, from without. We think that this case is one of the most important First Amendment cases the Court has seen in the past 25 years, and has the ability to serve as a valuable precedent for thousands of American authors and analysts. Moreover, we feel that this case will have an extremely important impact on how our citizens are able to respond to the war on terrorism. We beg the Court to afford the Plaintiff an opportunity to defend her constitutional

rights against inequitable foreign libel laws, and to address the greater issues at hand.

WHEREFORE, for the reasons set forth above, I think that the proposed *amicus curiae* brief will be of special assistance to this Court, and respectfully request that the Court grant the instant application and permit the Amicus to appear as *amicus curiae* in this appeal, and such other and further relief as the Court deems just and proper.

Dated: New York, New York  
October 9, 2007

  
\_\_\_\_\_  
Brooke M. Goldstein

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

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RACHEL EHRENFELD,

*Plaintiff-Appellant,*

– against –

KHALID SALIM A BIN MAHFOUZ,

*Defendant-Respondent.*

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**BRIEF FOR *AMICUS CURIAE* THE MIDDLE EAST FORUM  
IN SUPPORT OF PLAINTIFF-APPELLANT**

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Dated: October 9, 2007

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**LISTING OF PARENT COMPANIES, SUBSIDIARIES  
AND AFFILIATES**

Pursuant to 22 NYCRR §500.1(c), *amicus curiae* states that it is a nonprofit organization, and does not have any public parents, subsidiaries or affiliates.

## INTEREST OF THE *AMICUS CURIAE*

The Middle East forum (MEF) is a 501(c)(3) nonprofit organization and established think tank. The MEF was founded, and is currently directed, by Daniel Pipes, an internationally respected author and one of the most prominent scholars and experts on Middle Eastern affairs and the war on terrorism. The Legal Project (LP) is an arm of the Middle East Forum, and is dedicated to protecting our country's valuable researchers, analysts and authors who have found themselves on the receiving end of targeted lawsuits while working to expose the threat of terrorism within our borders. The LP has fielded requests for help from authors and analysts in similar situations as Dr. Ehrenfeld, and endeavors to provide them with its support.

The LP has an interest in developing an environment wherein American experts and researchers, who publish information about terrorism and its sources of financing, are able to, without undue intimidation and unconstitutional obstruction, discuss matters of imminent concern to the American public. The Amicus is uniquely suited to assist the Court in the resolution of this appeal and can offer context as to the greater issue at hand, namely the phenomenon of "lawfare," which is, the pursuit of strategic aims through aggressive legal maneuvers.

## **BRIEF**

### **I. The Growing Threat of “Lawfare” to American Researchers, Analysts & Authors**

A viscous and particularly dangerous form of offensive “lawfare” is being carried out by the enemies of the free world, with the strategic goal of intimidating, bankrupting and ultimately silencing those who dare speak out against their actions. Those who preach hate and destruction of the West, as well as those who finance terrorism, have been targeting media outlets, book publishers as well as innocent researchers and authors who have dedicated their lives to exposing the sources of terrorism, with a series of expensive and destructive lawsuits. These lawsuits aim to silence critics of radical Islam and terrorism, and are usually based on frivolous claims ranging from defamation, to workplace harassment, to conspiracy to violate civil rights. While the prosecution in these cases have the full support and financial backing of wealthy domestic and foreign charities as well as states such as Saudi Arabia and Egypt to the tune of millions of dollars, the defendants simply do not have adequate funds or resources to turn to for ample support.

Civilians throughout American history have always been the government’s “first responders,” especially against terrorism, but lawsuits by wealthy financiers, radical clerics and the organizations that support

them, are frightening people into silence as their victims seek to avoid the nightmare of being named as defendants, being labeled as bigots and having their assets garnered in accordance with foreign libel judgments. In the words of noted attorney Jeffrey Robbins, *"this is an attempt by folks who apparently have massive financial resources to dress up as a conspiracy [legitimate questioning protected under the First Amendment], and it has a distinctly McCarthyite aspect to it."* Due to the threat of suit, people are becoming afraid to report mosques that proliferate hate to the government. Newspapers, magazines and think-tanks are afraid to publish reports and articles about the problem of violent radicalization within our borders, and book publishers are rejecting meritorious works for fear of being sued.

This form of "lawfare" is quickly gaining momentum with a ripple effect, has succeeded in intimidating civilians, the media and non-profit organizations from exercising their freedom of speech, and has incurred a cost burden of thousands of dollars while the list of innocent victims against whom suits have been wrongfully filed is considerable and growing.

Central to defeating this assault on the free flow of accurate information within the United States is an environment in which American authors and researchers feel comfortable exercising their right to free speech. Dr. Ehrenfeld's case could prove one of the most important First

Amendment cases in the past 25 years. It is time for a precedent to be set against libel tourism and unfair threats against innocent American citizens to lose their chilling effect.

## **II. Case Examples of “Lawfare” and Libel Tourism Against American Citizens**

American citizens have been repeatedly targeted in legal actions designed to intimidate and chill free speech about issues of terrorism. Such lawsuits are often predatory and filed without a serious expectation of winning. Plaintiffs seek less to prevail in the courtroom than to bully and bankrupt the Defendants. Legal action has become a mainstay of radical individuals and organizations seeking to intimidate and silence their critics. Researchers are getting tired of the hassle of lawsuits and are remaining silent on crucial issues of state security.

With regards to libel tourism, it is important to note that Khalid Bin Mahfouz has previously availed himself of U.K. libel laws, including filing suit or threatening to file suit for defamation, at least 36 other times. Bin Mahfouz has also come under scrutiny for his links to terrorist activity in numerous instances, including being named a defendant in a lawsuit filed by family members of victims of Sept 11<sup>th</sup> terrorist attacks.

The following are recent examples of “lawfare”:

(1) Khalid Bin Mahfouz v Robert Collins & J. Millard Burr (co-authors of “Alms for Jihad”) - Khalid Bin Mahfouz, the same Defendant in the current matter, wrote a letter to Cambridge University Press, publisher of “Alms for Jihad,” threatening suit because his name was mentioned thirteen times in the book. Within a week of receiving the letter, Robert Collins, former U.S. State Department Employee and intelligence analyst, and J. Millard Burr sent supporting research and documents and assured the University of the merit of their assessments, which the publisher’s legal department had previously approved of. Nevertheless Cambridge University Press capitulated, ceased print of “Alms”, took the unprecedented step of destroying all unsold copies of the book, asked university libraries to remove the “Alms” from their shelves, paid Bin Mahfouz’s legal costs, and released an apology letter.

(2) KinderUSA v Yale Press & Michale Levitt (author of “ Hamas”)— KinderUSA sued Levitt and his publisher, Yale Press, after Levitt published a book linking KinderUSA to the Holy Land Foundation and the designated terrorist group Hamas. The Plaintiff withdrew its suit against both Defendants with prejudice, after the Plaintiff resorted to the state’s Anti-SLAPP statute, arguing that the suit was an attempt, not to win in court, but

to harass and bankrupt the authors for publishing matters of imminent public concern.

(3) John Doe v Bruce Tefft & the NYPD– Bruce Tefft, a former independent contractor and terrorism analyst for the NYPD, was sued, along with the NYPD, for workplace harassment by an Egyptian NYPD officer. Tefft had sent out emails to a voluntary recipient list of NYPD offices, with articles about the threat of radical Islam within our borders. While this suit is ongoing, the NYPD recently released an official report describing, in detail, the same matters that had been of Tefft's concern.

(4) Iqbal Unus vs. Rita Katz - Unus' house was searched in the course of a U.S. government operation, code-named 'Green Quest.' In 2004, Unus sued Katz, a non-governmental counterterrorist expert, on the grounds that she was responsible for the raid because she shared intelligence information with a U.S. customs agent. Unus lost and was ordered to pay Katz's court costs.

(5) Council on American-Islamic Relations vs. Andrew Whitehead of Anti-CAIR website – Whitehead created a website in which he worked to proliferate information linking CAIR to terrorism. In March 2004, CAIR sued Whitehead for libel and claiming injury to the organization's reputation. Two years later, CAIR withdrew its lawsuit before discovery.

(6) Islamic Society of Boston (ISB) v The David Project et al. – The ISB sued The David Project, a nonprofit organization, as well as 17 other defendants including FOX Television, and prominent analysts such as Steven Emerson, for publicly asking questions about ISB's efforts to establish a mosque with government money, and its connections to radical Islam. In June 2007, before discovery, ISB dropped the suit.

### **III. Why the Court Should Hear Dr. Ehrenfeld's Case on its Merits**

Upon consideration of the cases listed above, it becomes clear that targeted lawsuits, and the threat thereof, are an increasing danger to our country's valuable counter-terrorism researchers, authors and analysts. It is important that the Court take this opportunity to pre-empt Bin Mahfouz's recent attempt to use foreign libel laws to harm an American citizen within the United States. The Court is in the position to send the message that these tactics will not prove an effective way to unconstitutionally silence our brave researchers and analysts who are on the front line of this war on terrorism.


By filing suit, Dr. Ehrenfeld is merely trying to be vigilant about protecting her constitutional rights in an environment where so many of her colleagues have been viscerally attacked.

## CONCLUSION

The seriousness of this unique threat against democratic freedoms and liberty can not be overstated. Authors who find themselves on the receiving end of defamation lawsuits as a result of their important and necessary work need to know that they will be protected to the full extent of the U.S. Constitution. Unfortunately, legal action by individuals and organizations seeking to intimidate and silence their critics in the United States, is an ascending phenomenon. There is a grave need for this Court to provide a forum within which this New York-based author can preemptively challenge the effects of this tactic.

Dated: New York, New York  
October 9, 2007

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THE MIDDLE EAST FORUM

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