Case No. 90-416

IN THE SUPREME COURT OF OHIO

APPEAL FROM THE COURT OF APPEALS
SIXTH APPELLATE JUDICIAL DISTRICT
WOOD COUNTY, OHIO

AMERICAN MOTORS CORPORATION

Plaintiff-Appellant

v.

RAHN M. HUFFSTUTLER

Defendant-Appellee

BRIEF OF AMICUS CURIAE AMERICAN CORPORATE COUNSEL ASSOCIATION

Thomas R. Sant
PORTER, WRIGHT, MORRIS & ARTHUR
41 South High Street
Columbus, Ohio 43215-3406
(614) 227-2000

Robert P. Cummins
Ill. ARDC # 00557838
Donald K.S. Petersen
Ill. ARDC # 06201782
BICKEL & BREWER
One First National Plaza
Suite 3120
Chicago, Illinois 60603-2006
(312) 630-5300

COUNSEL FOR AMICUS CURIAE
AMERICAN CORPORATE COUNSEL
ASSOCIATION

OF COUNSEL:
Nancy A. Nord
Court of Appeals
District of Columbia
Registration # 55830
Executive Director
AMERICAN CORPORATE
COUNSEL ASSOCIATION
1225 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 296-4522

BRIEF OF AMICUS CURIAE
AMERICAN CORPORATE COUNSEL ASSOCIATION

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IN THE SUPREME COURT OF OHIO

AMERICAN MOTORS CORPORATION, Appellant, v. RAHN M. HUFFSTUTLER, Appellee.	Case No. 90-416 On Appeal From The Court Of Appeals Of Wood County

BRIEF OF AMICUS CURIAE AMERICAN CORPORATE COUNSEL ASSOCIATION

Amicus Curiae American Corporate Counsel Association ("ACCA") files this Memorandum in support of Appellant American Motors Corporation's ("AMC") appeal of the Court of Appeal's dissolution of an injunction preventing a former AMC attorney and technical consultant from disclosing confidential and privileged information acquired while he was working for AMC.

I.

INTRODUCTION

This appeal presents for review by this Court an apparent conflict between two fundamental ideals of American Jurisprudence.[1] Although the First Amendment to the United States Constitution appears to guarantee absolute freedom of speech, American courts have recognized since at least the

[1]Though ACCA believes that no conflict in fact exists, one is clearly created by the Court of Appeal's opinion.

1820's that the attorney-client privilege restricts an attorney's right to disclose information received in confidence from a client.[2] These courts recognize that:

> To permit the attorney to reveal to others what is disclosed would not only be a gross violation of a sacred trust upon his part, but it would utterly destroy and prevent the usefulness and benefits to be derived from professional assistance.[3]

The question for this Court's review is whether the balance of these two doctrines, which have peacefully co-existed in this country since at least the early 1800's, should be upset as contemplated by the appellate court. Indeed, this Court must determine whether it should be the first to rule that an attorney may rely on the First Amendment to disclose privileged information to a client's detriment.

The issues presented by this case are of particular importance to the members of ACCA. ACCA members are licensed attorneys, subject to all the obligations imposed by the profession. They are also corporate employees and, therefore, enjoy a particularly close relationship with their corporate clients. If this Court finds that corporate counsel may divulge client confidences with impunity, that relationship

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[2]See generally, Hazard, "An Historical Perspective on the Attorney-Client Privilege," 66 California Law Review 1061, 1087-1091 (1978).

[3]Mechem, 2 Agency, 2d. Ed., § 2297 in Model Code Canon 4 footnote.

will be destroyed and the ability of in-house counsel to effectively represent their client will be seriously threatened.

II.

STATEMENT OF THE FACTS

Rahn Huffstutler ("Huffstutler") was hired as an engineer by AMC in 1974 and became a licensed attorney in Ohio in 1978. Beginning in 1981, Huffstutler became intimately involved in legal and technical aspects of AMC's defense of product liability lawsuits. Incident to his involvement in these lawsuits, Huffstutler gained access to privileged materials and documents essential to AMC's defense. Upon his termination in 1988, Huffstutler removed certain privileged materials and entered into agreements to assist Plaintiffs' attorneys in the very type of litigation on the defense of which he had previously assisted AMC. AMC immediately sought to enjoin Huffstutler's questionable behavior. The appellants seek to reinstate the injunction granted by the Ohio Court of Common Pleas and dissolved by the Court of Appeals.

III.

PROPOSITION OF LAW No. 1: ATTORNEYS HAVE NO FIRST AMENDMENT RIGHT TO DISCLOSE PRIVILEGED ATTORNEY-CLIENT COMMUNICATIONS

A. Permitting The First Amendment To Vitiate The Attorney-Client Privilege Would Betray The Very Ideals Fostered By The First Amendment.

1. Free Speech Is Not Absolute.

Despite the broad protection of speech under the First Amendment, its guarantees are not absolute. Indeed certain

categories of speech remain unprotected.[4] Speech which does not foster or which detracts from the ideals promoted by the First Amendment is not afforded the same protection as that speech which does.[5] In these circumstances, the United States Supreme Court has subordinated an individual's First Amendment rights to other interests of society.[6]

The standard for determining the legality of prior restraints on speech has fluctuated over time.[7] The United States Supreme Court, though, has recently formulated the proper inquiry as being:

> whether 'the practice in question [furthers] an important or substantial governmental interest unrelated to the suppression of expression' and whether 'the limitation of First Amendment freedoms [is] no greater than is necessary or

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[4] Konigsberg v. State Bar of California, 366 U.S. 36, 49-51 (1961); American Communications Assn. v. Douds, 339 U.S. 382, 394-395 (1950)("Freedom of speech . . . does not comprehend the right to speak on any subject at any time.")

[5] See e.g., Beauharnais v. Illinois, 343 U.S. 250 (1952); New York Times v. Sullivan, 376 U.S. 254, 11 L.Ed.2d 686, 84 S.Ct. 710 (1964); Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942); Feiner v. New York, 340 U.S. 315, 321 (1951); Roth v. United States, 354 U.S. 476 (1957).

[6] See Whitney v. California, 274 U.S. 357, 375-376 (1927) (Brandeis, J., concurring).

[7] For example, the Justice Holmes' "clear and present danger" test enunciated in Schenck v. United States, 249 U.S. 47 (1919), was quickly expanded by a majority of the court to the so-called "bad tendency" test. See, e.g., Gitlow v. New York, 268 U.S. 652 (1925); and Whitney v. California, 274 U.S. 357 (1927). Eventually the Court adopted an implicit balancing test, which weighed the danger of permitting the speech against Society's interest in maintaining free speech. See, e.g., Dennis v. United States, 341 U.S. 494 (1951).

essential to the protection of the particular governmental interest involved.'[8]

In short, if the prohibition of certain types of speech provides legitimate benefits to society which outweigh any accompanying harms, the prohibition fosters the ideals of the First Amendment and will be permitted.

For example, the First Amendment does not provide blanket protection to speech which reveals confidential information gained in the course of a special or confidential relationship.[9] This includes information obtained through confidential discovery procedures,[10] classified information obtained pursuant to an agreement not to disclose that information[11] and confidential business information. With respect to these categories of speech, courts have determined that protecting the confidential relationships through which the speech was originally made is vital to maintaining a free

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[8]Seattle Times Co. v. Rhinehart, 467 U.S. 20, 32 (1984)(quoting Procunier v. Martinez, 416 U.S. 396, 413, 94 S.Ct. 1800, 1811, 40 L.Ed.2d 224, (1974)).

[9]See Valco Cincinnati. Inc. v. N & D Machining Serv., Inc., 24 Ohio St.3d 41, 48, 492 N.E.2d 814, 820 (Ohio 1986).

[10]See Seattle Times, 467 U.S. 20, 26, 104 S.Ct. 2199, 2204, 81 L.Ed.2d 17 (1984).

[11]See Snepp v. United States, 444 U.S. 507, 100 S.Ct. 763, 62 L.Ed.2d 704 (1980); United States v. Morrison, 844 F.2d 1057 (4th Cir.), cert. denied, 109 S.Ct. 259 (1988).

flow of communication between the parties and ultimately enhancing First Amendment ideals.[12]

2. The Attorney-Client Privilege Is Consistent With The First Amendment.

The ideals fostered by the attorney-client privilege are consistent with those fostered by the First Amendment. Although many theories have been advanced to explain the First Amendment, most can be reduced to Justice Holmes' seemingly simple proposition that a just and effective government can be achieved only by permitting all communications to compete freely in the marketplace of ideas.[13] It is only through this interplay of ideas that the ultimate truth will be revealed. Indeed, the United States Supreme Court has reasserted that a fundamental purpose of the First Amendment is to ensure the "freedom of communications on matters relating to the functioning of government."[14]

It is axiomatic that a fair, effective and just legal system is an indispensible part of the functioning of

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[12]Other types of speech also are not protected by the First Amendment. For example, obscenity, so-called "fighting words," and speech intended and likely to produce illegal behavior are not protected by the First Amendment. Courts have determined that the content of this speech poses grave dangers to society which are not accompanied by sufficient corresponding benefits. See, e.g., Miller v. California, 413 U.S. 15, 37 L.Ed.2d 419, 93 S.Ct. 2607.

[13]Abrams v. United States, 250 U.S. 616, 630 (1919) (dissenting opinion).

[14]Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980).

government. Moreover, it has long been recognized that the existence of an attorney-client privilege is a necessary feature of a fair, effective and just legal system.[15] The attorney-client privilege is essential both for preparing a case and for counseling clients. The attorney-client privilege encourages clients to be truthful and candid with their attorneys. Without such candor, an attorney cannot provide effective legal advice.[16] Indeed, it is likely that some individuals will fail to seek an attorney's advice if they believe that the information they reveal to the attorney can be disclosed to third parties. Moreover, the attorney-client privilege fosters voluntary compliance with our laws.[17] In the absence of an attorney-client privilege, clients will become reluctant to communicate freely with their attorneys, and attorneys will be unable to explain laws to the clients and ensure their compliance with them. Vitiating the attorney-client privilege under the guise of "free speech" would nullify these universally accepted benefits.

The existence of the attorney-client privilege demonstrates that the effective functioning of our judicial system is worth

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[15]Upjohn v. United States, 449 U.S. 383, 389, 101 S.Ct. 677, 682 (1981) (The attorney-client privilege "recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client."); See also In re Crocker, 401 So.2d 1 (Ala. 1981).

[16]See Upjohn, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584; In re Von Bulow, 828 F.2d 94, 100 (2d Cir. 1987).

[17]See Natta v. Hogan, 392 F.2d 686, 691 (10th Cir. 1968).

the price of excluding certain communications from the marketplace of ideas; it is the recognition by society that the ultimate search for truth, justice and the effective functioning of government are best served by enhancing the attorney-client relationship and prohibiting disclosure of privileged communications. Permitting the First Amendment to emasculate the attorney-client privilege is wholly inconsistent with the very ideals sought to be promoted by the First Amendment.

B. Professional Obligations Limit An Attorney's First Amendment Rights.

It is indisputable that an attorney's First Amendment rights are limited by one's professional obligations as an attorney. When admitted to practice, an attorney voluntarily accepts special obligations under the Code of Professional Responsibility and/or the Model Rules of Professional Conduct[18] which necessarily limit the attorney's First Amendment rights. For example, once an attorney-client relationship has been established, confidential information an attorney acquires from his client is subject to the express legal obligation that the attorney maintain it in confidence. An attorney who discloses privileged information obtained

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[18]The governing rules of conduct are determined by each jurisdiction.

during the attorney-client relationship violates his obligations under the Code of Professional Responsibility.[19]

This duty of confidentiality is one of a lawyer's most important duties. It "is the cornerstone of the legal profession, without which the adversary system would not work."[20] An attorney's ethical obligation to maintain a client's confidence encompasses all communications between the attorney and the client.[21] It recognizes that "[t]he client must be secure in his belief that his lawyer will never disclose secrets confided in him."[22] Moreover, an attorney's duty of confidentiality continues even after his employment has been terminated.[23] As the Second Circuit stated:

> Without strict enforcement of such high ethical standards, a client would hardly be inclined to discuss his problems freely and in depth with his lawyer, for he would justifiably fear that information he reveals

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[19] See Canons 4 and 9 of the Code of Professional Responsibility and Rule 1.6 of the Model Rules of Professional Conduct. See Ohio Code of Professional Responsibility DR 4-101(b)(1) ("A lawyer shall not knowingly reveal a confidence or secret of his client.") See also Restatement, The Law Governing Lawyers, Tentative Draft No. 3 (1990), § 111.

[20] In re Crocker, 401 So.2d 1, 8 (Ala. 1981).

[21] Doe v. A Corp., 330 F.Supp. 1352, 1355-1356 (S.D.N.Y. 1971), aff'd sub nom, Hall v. A Corp., 453 F.2d 1375 (2d Cir. 1972) (per curiam); Doe v. A Corp., 709 F.2d 1043, 1046 (5th Cir. 1983); See EC 4-4. This also encompasses the attorney's employees and those whose services the attorney utilizes. Sammartino v. Planning and Zoning Commission of the Town of Andover, 471 A.2d 989, 990-91 (CT.Super. 1983).

[22] Doe, 330 F.Supp. at 1354. See EC 4-4.

[23] EC 4-6.

> to his lawyer on one day may be used against him on the next.[24]

Indeed, this duty reflects strong public policy.[25] It is particularly applicable in the corporate context.[26] Because they are located within the corporation and work closely with their clients on a day-to-day basis, corporate attorneys have access to a great deal of confidential information. This information comes to counsel not only in the context of specific litigation issues, but also, and more importantly, as a part of the in-house attorney's preventive law and counseling duties. To allow the attorney to breach his duty of confidentiality flies in the face of established law and policy.

In a case remarkably similar to the one under review, the Fifth Circuit emphasized the importance of an attorney's duty to maintain a client's confidences and refused to permit a corporation's former in-house attorney to assist a plaintiff class in an action against the corporation.[27] As a lawyer for

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[24]Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562, 570-571 (2d Cir. 1973).

[25]Id. at 575.

[26]Evans v. Artek Systems Corp., 715 F.2d 788, 792 (2d Cir. 1983) ("A 'corporate attorney' -- whether an in-house lawyer or a law firm that serves as counsel to the company -- owes a duty to act in accordance with the interests of the corporate entity itself . . . He may not serve the corporation in a particular matter and then represent a plaintiff in a suit against it or its offices in a substantially related matter.") (citations omitted).

[27]Doe, 709 F.2d 1043; See also Housler v. First National Bank of East Islip, 484 F.Supp. 1321, 1323-1324 (E.D.N.Y. 1980)(former general counsel prohibited from providing any assistance in action against former employers).

the corporation, the attorney had been intimately involved in resolving legal questions surrounding the administration of an employee benefit plan.[28] The attorney later brought suit, as co-counsel and class representative, on behalf of himself and a class of plaintiffs alleging various violations of the plan's administration.[29] Although the lawyer subsequently resigned as co-counsel, the Fifth Circuit granted the defendant's motion and prohibited the attorney from remaining in the class.[30]

The Fifth Circuit based its ruling on Canon 4 and found that the attorney had violated his duty to maintain his client's confidences. The attorney, the court reasoned, would be precluded by this duty from being class counsel. The court refused to permit the attorney to, "simply by assuming a new identity, escape the strictures that would govern his conduct were he representing the class as counsel."[31] Indeed, this

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[28]Doe, 709 F.2d at 1044-45.

[29]Id. at 1045.

[30]The defendant did not request an injunction prohibiting the attorney from revealing privileged information. Unlike the case under review in which Mr. Huffstutler appears in various jurisdictions seemingly at random, Doe was involved in only a single action in which privileged materials could be disclosed.

[31]Id. at 1048; see also Housler, 484 F.Supp. at 1323-1324 ("This court is of the opinion that his third party status alone does not alter Lang's ethical obligations under Canon 4 not to disclose the secrets and confidences of his former clients for the benefit of their present adversaries.")

same duty also barred the attorney "from disclosing information he received from [his former employer] to some other lawyer."[32]

Similarly, this Court, in a case far less egregious than the one under review, held that an attorney has no First Amendment right to engage in speech which is inconsistent with his professional obligations.[33] In Mayer, this Court upheld an order compelling the retirement of a sitting judge. The appellant argued, inter alia, that he had a First Amendment right to make the statements for which he was disciplined. This Court disagreed, quoting Justice Stewart's conclusion that "'[o]bedience to ethical precepts may require abstention from what in other circumstances might be constitutionally protected speech.'"[34]

Mayer is a particularly persuasive precedent because attorneys are permitted, to a certain extent, to critique the legal system.[35] Such speech becomes impermissible only when certain limits are exceeded.[36] An attorney, however, is under

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[32]Id. at 1047 (citing Housler, 484 F.Supp. 1321, 1322-1324 (E.D.N.Y. 1980)); Richardson v. Hamilton International Corp., 333 F.2d 1049, 1055 (E.D. Pa. 1971), aff'd 469 F.2d 1382 (3rd Cir.), cert. denied, 411 U.S. 986, (1973); Doe, 330 F.Supp. at 1355.

[33]Ohio State Bar Association v. Mayer, 54 Ohio St. 2d 431, 438-39; 377 N.E.2d 770, 774, cert. denied, 439 U.S. 1048 (1978).

[34]Id. at 774 (quoting In re Sawyer, 360 U.S. 622, 646-647, 79 S.Ct. 1376, 1388, 3 L.Ed. 2d 1473 (1959)(Stewart, J., concurring)).

[35]See In re Sawyer, 360 U.S. 622, 3 L.Ed. 2d 1473, 79 S.Ct. 1376 (1959).

[36]Id.

an absolute duty to maintain his clients' confidences. Indeed, courts have consistently held that "[t]he Code of Professional Responsibility . . . restricts attorneys' right of free speech when the speech would adversely affect their clients,"[37] and the disclosure of privileged information obtained as a result of an attorney's confidential relationship with his client is not protected by the First Amendment.[38] Given that this Court has ruled that an attorney may not rely on the First Amendment to engage in commentary which is limited by the Code of Professional Responsibility, it follows a fortiori that an attorney may not rely on the First Amendment to engage in speech which is deemed sacrosanct by the Code of Professional Responsibility.

C. Permitting An Attorney To Rely On The First Amendment to Disclose A Client's Confidences Would Destroy the Attorney-Client Privilege.

The attorney-client privilege would effectively be destroyed if an attorney's right to free speech is enlarged to include privileged communications. It is impossible to

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[37]Harmon v. LaCrosse Tribune, 117 Wis.2d 448, 451, 344 N.W.2d 536, 539, cert. denied, 469 U.S. 803 (1984).

[38]See, e.g., In the Matter of Frerichs, 238 N.W.2d 764, 769 (Iowa 1976) (attorneys have fewer rights of free speech than do private citizens); State v. Nelson, 210 Kan. 637, 640, 503 P.2d 211, 214 (1972) (professional obligations limit an attorney's right to free speech); In re Woodward, 300 S.W.2d 385, 393-394 (S.Ct. Mo. 1957) (the Canons of ethics limit an attorney's right to free speech); Paul L. Pratt, P.C. v. Blunt, 140 Ill.App.3d 512, 520, 448 N.E.2d 1062, 1068 (5th Dist. 1986) (injunction to prohibit violation of disciplinary rules is not prohibited by rights of free speech).

articulate a workable standard on which basis only selected categories of privileged information could be disclosed. There simply is no principled method of distinguishing and prioritizing various types of privileged communications. Moreover, any balancing test or ad hoc determination would not only deprive attorneys of the predictability necessary to effectively counsel clients, it would also necessarily reveal the content of the privileged communication as a part of the determination process.

The ultimate result of such a regime would be a voluntary privilege subject to the whims of the attorney. This would be a drastic and sudden reversal of well-established law which holds that the privilege belongs to, and can only be waived by, the client. Indeed, a voluntary privilege is equivalent to no privilege. The flow of communications between attorneys and clients would be irreparably interrupted, because clients could no longer be confident that their confidences would be maintained.

These concerns are heightened in the corporate context. As our legal system evolves, and complex litigation becomes more common, corporations are increasingly relying on in-house lawyers, and technical consultants and other legal staff that support them. Protecting the confidentiality of communications involving these professionals is vital to providing effective guidance to corporations and preparing for litigation.

In-house corporate legal departments are threatened by the appellate court's decision. Corporations will be forced to operate knowing that, according to the appellate court, legal

department employees, including attorneys and technical staff, have the right to leave their employment and offer to the highest bidder confidential information gained while working for the corporation. Such a result will create an impossible working relationship between the in-house attorney and the corporate client. In addition, this result implicitly undercuts the professionalism of the in-house bar. The appellate court's decision says to the corporate client that employed attorneys are not held to the same high professional standards as are retained counsel and that the client should entrust its secrets to such attorneys at its own risk. Such a result has no validity in fact or law and should be soundly rejected.

PROPOSITIONS OF LAW NO. 2: INJUNCTIONS ARE REQUIRED TO PREVENT THE DISCLOSURE OF PRIVILEGED INFORMATION.

Given the vital importance of confidential communications between attorneys and their clients, injunctions are appropriate, and indeed necessary, to preserve the sanctity of the attorney-client relationship in the face of a threatened or actual disclosure of a client's confidences.[39] Indeed, "[t]hese considerations require application of a strict prophylactic rule to prevent any possibility, however slight, that confidential information acquired from a client during a

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[39]See Cannon v. U.S. Acoustics Corp., 532 F.2d 1118, 1120 (7th Cir. 1976) (upholding injunction to prevent an attorney from disclosing privileged and confidential information obtained from a client); Conforti & Eisele, Inc. v. Division of Building and Construction, 170 N.J. Super. 64, 405 A.2d 487, 490 (1979) (upholding injunction to prevent expert from revealing confidential and privileged information).

previous relationship may subsequently be used to the client's disadvantage."[40] Moreover, in an analogous situation, this Court has found that there is no constitutional bar to the issuance of such an injunction.[41]

An injunction is the only effective method of preventing the disclosure of a client's confidential and privileged information by an attorney. By their very nature, the goals and ideals fostered by an attorney's duty of confidentiality are eliminated the precise instant that any unauthorized disclosure takes place. Post hoc remedies, such as disciplinary proceedings, disqualifications, or actions for damages simply do not address the irreparable harm which results from the disclosure of a client's confidential communications.[42] Disciplinary proceedings have little effect on one who no longer practices law, such as Mr. Huffstutler. Similarly, disqualifications cannot prevent one not

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[40]Emle Industries, Inc., 478 F.2d at 571; See also Housler v. First Bank of East Islip, 484 F.Supp. 1321, 1322 (E.D.N.Y. 1980) ("Canon 4 . . . requires that a strict prophylactic rule be applied to prevent any possibility that confidential information acquired from a client during a previous relationship may subsequently be used to the client's disadvantage.").

[41]Valco Cincinnati, Inc., 24 Ohio St.3d 41, 48, 492 N.E.2d 814 (1986) (injunction against the disclosure of confidential business information is constitutionally permissible). Indeed, as discussed previously, supra Section A and B, the First Amendment does not protect confidential and privileged attorney-client communications.

[42]The Court of Appeals made the conclusory observation that the injunction entered by the lower court was overbroad. ACCA believes, however, that preventing the disclosure of privileged information could not be achieved with a more narrow injunction.

representing a party from providing assistance to that party; non-testifying experts, for example, are often only fortuitously discovered. Finally, damages are difficult or impossible to estimate and are incapable of repairing the damage to the client's confidences. Indeed, to adequately protect the attorney-client relationship (and thus maintain the integrity of our adversary system), injunctions are critical to preventing a disclosure of a client's confidences by his attorney.

This was recognized in a recent order by Judge David Parrish in the State of Colorado, as the court emphasized that an attorney has a duty to maintain clients' confidences and held that it applied equally to a law firm's former legal assistant.[43] In this case, the former legal assistant published and began distributing a book which contained confidential information he learned while employed by the law firm, including settlement agreements and clients' names. The law firm brought suit seeking an injunction to prevent the further distribution of the book, and the court issued the injunction.[44]

The court found that although the defendant was not an attorney, as an employee of the law firm he had an obligation

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[43]Norton Frickey & Associates v. Troxler, Civil Action No. 90 CV 2845 (Colo. Dist. Ct. El Paso, May 30, 1990), attached hereto as Exhibit "A."

[44]Although there was a previous settlement agreement in effect between the parties which specifically prohibited the defendant from disclosing confidential information related to his employment with the law firm, the court did not rest its decision on this ground.

to maintain its clients' confidences and could not disclose them without their consent.[45] Indeed, the court expressly found that the government had the right to prevent the disclosure of a law firm's clients' confidential information:

> there is also the right of the government, which has been expressed by the legislature of the State of Colorado, to prohibit the publication of . . . the confidences of clients, their communications to their lawyers and legal assistants, and that these are appropriate restraints that can and should be enforced in court.[46]

Accordingly, the court issued an injunction prohibiting any further publishing, sale or dissemination of the book.[47] Indeed, the court went further and prohibited the former legal assistant from disclosing any information regarding the law firm and its clients.[48] An injunction was necessary, the court found, because "without an injunction . . . there would be real and immediate injury, and there would not be a speedy or adequate remedy."[49]

IV.

CONCLUSION

The attorney-client privilege is deeply rooted in legal history and is the cornerstone of our legal system. Allowing

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[45] Troxler, at 3, lines 10-16.

[46] Id. at 4, lines 14-21.

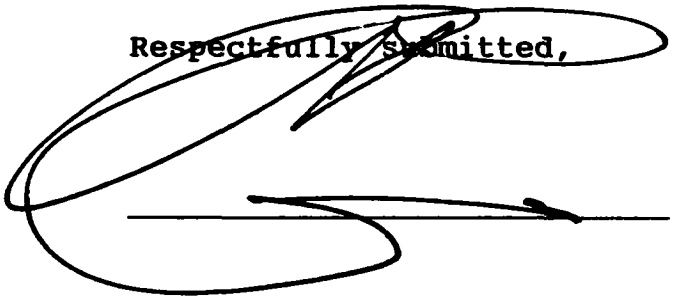
[47] Id. at 6, lines 4-14.

[48] Id. at 10, line 19, through 11, line 4.

[49] Id. at 5, lines 7-10.

attorneys under the guise of "free speech" to disclose their clients' confidences would irreparably undermine the attorney-client relationship and destroy public confidence in the profession. Although all individuals in need of legal representation would fear the disclosure of their confidences, corporations, with their extensive in-house staffs, would face particularly great peril. Indeed, the appellate court's approval of former attorneys and legal staff offering for sale their former client's privileged information gives an entirely new meaning to Justice Holmes' marketplace of ideas.

Respectfully submitted,



Thomas R. Sant
PORTER, WRIGHT, MORRIS &
ARTHUR
41 South High Street
Columbus, Ohio 43215-3406
(614) 227-2000

OF COUNSEL:
Nancy A. Nord
Court of Appeals
District of Columbia
Registration # 55830
Executive Director
AMERICAN CORPORATE
COUNSEL ASSOCIATION
1225 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 296-4522

Robert P. Cummins
Ill. ARDC # 00557838
Donald K.S. Petersen
Ill. ARDC # 06201782
BICKEL & BREWER
One First National Plaza
Suite 3120
Chicago, Illinois 60603-2006
(312) 630-5300

COUNSEL FOR AMICUS CURIAE
AMERICAN CORPORATE COUNSEL
ASSOCIATION

DKPB/245