



## HOLWELL SHUSTER & GOLDBERG FILES PROPOSED *AMICUS* BRIEF ON BEHALF OF FOURSQUARE, KICKSTARTER, MEETUP, AND VIMEO TO DEFEND USER PRIVACY

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**N**ew York—Foursquare, Kickstarter, Meetup, and Vimeo submitted an *amicus* brief in an appeal to the New York State Court of Appeals challenging search warrants obtained by the Manhattan District Attorney directing Facebook to produce content and other data associated with 381 Facebook accounts—the largest set of search warrants Facebook has ever received—and a gag order barring Facebook from disclosing the existence of the warrant to its users. Holwell Shuster & Goldberg LLP filed its motion for leave to file the brief with the Court today.

In July, the New York State Supreme Court’s Appellate Division held that Facebook has no right to challenge the search warrants or the gag order because Facebook was challenging the warrants “pre-enforcement” and outside of any criminal proceeding. Facebook had appealed the trial court’s ruling denying its motion to quash, or invalidate, the search warrants, arguing that the search warrants were overly broad, violated the Fourth Amendment, and that the gag order violated the First Amendment.

The *amicus* brief presents the perspective of dynamic players in the growing New York tech industry: Foursquare, Kickstarter, Meetup, and Vimeo. The amici argue that online platforms must be able to raise Fourth Amendment objections to search warrants, both on their own behalf and on behalf of users. If the Appellate Division’s decision stands, the amici continue, online platforms like themselves will never be able to challenge search warrants they receive because any criminal charge (if any) would be brought against users, not the company. Moreover, the amici argue that gag orders like the one the trial court issued violate their First Amendment rights to notify users of government information requests so that users can decide whether to challenge those requests.

“New York’s growing tech industry must have the option to challenge law enforcement requests for confidential user content and, where appropriate, to inform users that their information has been targeted,” said Judge Richard J. Holwell, co-founder of Holwell Shuster & Goldberg and a former federal judge in the U.S. District Court for the Southern District of New York. “Although sometimes the right response is to comply with the request, sometimes the request goes too far. But the Appellate Division’s decision mandates that online platforms in New York simply acquiesce in all cases,” he continued.

Holwell Shuster & Goldberg attorneys who drafted the brief include founding partner Richard J. Holwell, chair of the firm’s Intellectual Property Department John M. DiMatteo, associate and former law clerk to the Honorable Antonin Scalia of the United States Supreme Court Daniel M. Sullivan, and associate Benjamin F. Heidlage.

## **ATTORNEYS**

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