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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

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JUN 05 2015

SC Court of Appeals

Court of Appeals No. 2014-001249
Civil Case No. 2012-CP-26-3804

Mark Kelley,Respondent,

v.

David Wren and Sun Publishing
Company Inc., d/b/a The Sun News, Appellants.

**MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE
PRESS AND THREE OTHER MEDIA ASSOCIATIONS FOR LEAVE TO FILE A
BRIEF AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS**

Edward T. Fenno, Esquire
FENNO LAW FIRM, LLC
171 Church Street, Suite 160
Charleston, SC 29401
(843) 720-3747
Attorney for *Amici Curiae*
Reporters Committee for Freedom of the Press,
National Newspaper Association,
Newspaper Association of America, and
Society of Professional Journalists

Proposed *amici curiae* The Reporters Committee for Freedom of the Press, the National Newspaper Association, the Newspaper Association of America, and the Society of Professional Journalists (collectively, “*Amici*”), by and through their counsel, hereby respectfully move this Court, pursuant to Rule 213, SCACR, for leave to file an *amici curiae* brief in support of appellants. *Amici*’s brief addresses questions of law relating to the constitutional “actual malice” standard for defamation and protections granted to the press by the First Amendment. As permitted by Rule 213, SCACR, the amicus brief is being conditionally filed along with this motion. In support of this motion, *Amici* submit their proposed amicus brief and further state as follows.

Introduction

Amici respectfully request that this Court grant them leave to file the Brief of the Reporters Committee for Freedom of the Press and Three Other Media Associations as *Amici Curiae* in Support of Appellants David Wren and Sun Publishing Company Inc., d/b/a The Sun News conditionally filed herewith. *Amici* respectfully believe that this case presents an issue that could have grave repercussions for freedom of the press in South Carolina. They also believe that this Court’s consideration of the constitutional “actual malice” standard could be informed by a discussion of the importance of maintaining the high standard required to support a finding of actual malice. Therefore, *Amici* request leave to file the brief conditionally filed with this motion in support of Appellants.

Interests of *Amici*

Amici are national organizations that represent the interests of journalists. Specifically, The Reporters Committee for Freedom of the Press (“Reporters

Committee”) is a voluntary, not-for-profit, unincorporated association of reporters and editors. Founded in 1970, the Reporters Committee is dedicated to preserving the freedom of the press guaranteed by the First Amendment and defending the public’s right to be informed, through the media, of the activities of their government and elected representatives. The constituency of the Reporters Committee has a special interest in advocating for the maintenance of the constitutional protections granted by the First Amendment and the actual malice standard as established by the United States Supreme Court and South Carolina courts. The Reporters Committee has participated as amicus curiae in multiple cases throughout the United States involving First Amendment issues and freedoms of the press and speech.

National Newspaper Association is a 2,400 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Columbia, Missouri.

Newspaper Association of America (“NAA”) is a nonprofit organization representing the interests of more than 2,000 newspapers in the United States and Canada. NAA members account for nearly 90% of the daily newspaper circulation in the United States and a wide range of non-daily newspapers. The Association focuses on the major issues that affect today’s newspaper industry, including protecting the ability of the media to provide the public with news and information on matters of public concern.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes

the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

Amici's Interest in this Appeal and Desirability of Brief

Amici seek leave to file their brief in this action because they believe that the case pending before this Court presents a question of critical constitutional importance to journalists — namely, the standard of proof required to show that a journalist acted with “actual malice” and thus is not entitled to the full protections of the First Amendment.

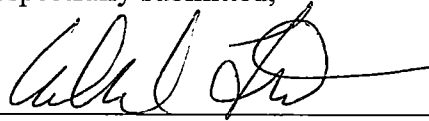
As representatives of journalists ranging from large national media organizations to local publications and freelance journalists, *Amici* are uniquely positioned to aid the Court in its understanding of application of the actual malice standard to journalists and the constitutional protections granted by the First Amendment to the press. A decision that weakens the requirements of the actual malice standard would result in a chilling effect on expression and would have serious negative effects on the ability of journalists to report on matters of public interest. *Amici* respectfully submit that their perspective on the application of the actual malice standard to the press is broader than that of the parties and that *Amici's* perspective will be of assistance in the Court's consideration of the broader impact that its ruling on the issues raised in this appeal may have on the dissemination of truthful and accurate information to the public – a matter of crucial importance to the public and press.

Conclusion

Accordingly, *Amici* respectfully request leave to file the *amicus* brief conditionally filed herewith in order to assist the Court with understanding and

considering the First Amendment issues and the broader interests of the *Amici* and
journalists in this matter.

Respectfully submitted,



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Newspaper Association of America, and
Society of Professional Journalists

Charleston, South Carolina
June 4, 2015

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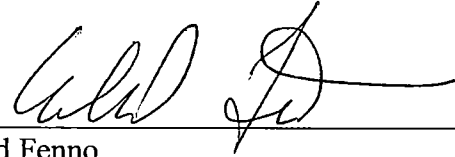
CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of June, 2015 served a copy of (1) the **Motion of The Reporters Committee for Freedom of the Press and Three Other Media Associations for Leave to File a Brief As *Amici Curiae* in Support of Appellants** and (2) the **Brief of the Reporters Committee for Freedom of the Press and Three Other Media Associations as *Amici Curiae* in Support of Appellants David Wren and Sun Publishing Company Inc., d/b/a The Sun News** filed conditionally herewith, upon all attorneys of record by depositing the same in the U.S. Mail in an envelope with sufficient postage affixed, addressed as follows:

James P. Stevens, Jr., Esquire
Natalie Shawn Stevens-Graziani, Esquire
Stevens Law Firm, PC
Post Office Box 127
Loris, South Carolina 29569
Attorneys for Respondent

Jerry Jay Bender, Esquire
Baker, Ravenel & Bender, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202

Attorney for Appellant

A handwritten signature in cursive script, appearing to read "Edward Fenno", is written over a horizontal line.

Edward Fenno

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June 4, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
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SC Court of Appeals

RE: Mark Kelley, Respondent v. David Wren and Sun Publishing Company, Inc.
d/b/a The Sun News, Appellants
Court of Appeals No. 2014-001249
Civil Case No. 2012-CP-26-3804

Dear Ms. Kitchings:

Please find enclosed an original and seven (7) copies of a Motion of the Reporters Committee for Freedom of the Press and Three Other Media Associations for Leave to File a Brief as Amici Curiae in Support of Appellants. The Motion is made by the Reporters Committee for Freedom of the Press, National Newspaper Association, Newspaper Association of America, and Society of Professional Journalists. Pursuant to Rule 213, SCACR, the brief is conditionally filed along with the Motion. Also enclosed is a Certificate of Service for the Motion and conditionally filed amicus brief. Please file the originals and return a file-stamped copy to my office in the enclosed self-addressed stamped envelope. Please also find enclosed a check in the amount of \$25.00 for the requisite filing fee.

I appreciate your assistance in this matter. If you have any questions, please do not hesitate to contact me. Thank you.

Very truly yours,

FENNO LAW FIRM, LLC



Edward T. Fenno

Enclosures

Cc: Jerry Jay Bender, Esquire
James P. Stevens, Jr., Esquire
Natalie Shawn Stevens-Graziani, Esquire

From: (843) 720-3747
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Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street

COLUMBIA, SC 29201

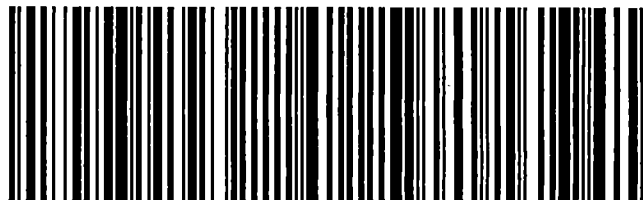
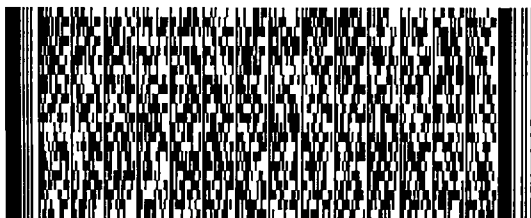
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